

United States
Circuit Court of Appeals
For the Ninth Circuit

FRANK D. COOPER,
Defendant and Appellant,

vs.

UNITED STATES OF AMERICA,
Complainant and Appellee.

GEORGE HEATON,
Defendant, Not Joining in Appeal.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District
Court for the District of Montana.

JAMES A. WALSH,
Solicitor for Appellant, Helena, Montana.

HON. B. K. WHEELER, U. S. Attorney,
Solicitor for Appellee, Helena, Montana.

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*In the District Court of the United States, in and
for the District of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

No. 946.

FRANK D. COOPER and GEORGE HEATON,

Defendants.

BE IT REMEMBERED, that on the 7th day of
December, 1909, complainant filed its Bill of Com-
plaint herein, in the words and figures following,
to-wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

FRANK D. COOPER and GEORGE HEATON,

Defendants.

IN EQUITY.

BILL OF COMPLAINT.

To the Honorable, the Circuit Court of the United States, Ninth Circuit, in and for the District of Montana:—

The United States of America, by George W. Wickersham, Attorney-General of the United States, and James W. Freeman, United States Attorney for the District of Montana, brings this bill of complaint against Frank D. Cooper, a resident of the State of Montana, and George Heaton, a resident of the Southern District of the State of Iowa, the defendants herein, and thereupon your orator complains and says:

FIRST:

That on and prior to the 19 day of June, A. D. 1902, your orator was the owner in fee simple of those certain public lands situated in the state and district of Montana and within the Helena Land District, and now within the land district of which the land office is at Great Falls, Montana, and more particularly described as follows:

The Southeast Quarter of the Southwest Quarter of Section Eight (8), the east Half of the northwest Quarter and the southwest quarter of the northwest quarter of Section Seventeen (17), township Nineteen (19) North of range three (3) West, containing one hundred and sixty (160) acres of land, situated, lying and being in the county of Cascade, state and district of Montana, and within the jurisdiction of this court.

That one Jay C. Freeman, on the said 19 day of June, A. D., 1902, under and by virtue of the provisions of Section 2289 of the Revised Statutes of the United States, made and filed in the local land office of the United States, at Helena, in the State and District of Montana, his application No. 13568, to enter as a homestead the lands hereinabove described.

SECOND:

That at the time of the filing by the said Jay C. Freeman, of his said homestead application No. 13568, to enter the above described lands and premises, and contemporaneously therewith, he likewise filed in the said local land office of the United States, as required by law, his affidavit and statement in writing under oath, in which, among other matters and things, he stated and deposed that his said application to enter said land as a homestead was honestly and in good faith made for the purpose of actual settlement and cultivation and that he would faithfully and honestly endeavor to comply with all the requirements of law as to said land and

the residence and cultivation necessary to acquire the title to said land so applied for and had not and did not apply to enter said lands for the purpose of speculation, but in good faith to make a home for himself. That thereupon the said Jay C. Freem, then and there paid to the Receiver of the said local land office of the United States, at Helena, Montana, the sum of sixteen dollars, the same being the proper and legal fee then and there due and payable to the said Receiver upon the filing of said application aforesaid. That thereafter on the second day of July, A. D., 1902, and upon such payment having been made as aforesaid, a receipt was then and there issued and delivered by the said Receiver of the said Helena Land Office to the said Jay C. Freeman for said amount of money so paid by him as aforesaid, and attached to an connected with said receipt was and is a notation setting forth in detail the requirements of the law to be observed and complied with by the said Jay C. Freeman, in order to obtain title to said lands so applied for by him as aforesaid and to be entered by him, as follows, to-wit: "Note.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years of the expiration of the said five years, he must offer proof of his actual settlement and cultivation, failing to

do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from the date of filing affidavit to the time of payment."

THIRD:

That thereupon, in order to entitle the said Jay C. Freeman to obtain and procure from the said United States a patent for said tract of land under the homestead laws of the United States, it was incumbent upon him, and he was required to make, actual settlement upon the said lands and reside thereon and cultivate the same for a period of five years from and after the time of the filing in said local land office at Helena, Montana, of his said application and affidavit hereinbefore set forth, or in case, he did not desire to remain upon said land the full period of five years to make payment for the said land at the expiration of fourteen months from and after the filing of said application and affidavit, upon making proof before the Register and Receiver of the said local land office of the United States, at Helena, Montana, of settlement upon and cultivation of said lands by the said Jay C. Freeman from the date of the filing of said application and affidavit down to the time of making such payment. That for the purpose of availing himself of the privilege afforded by law in such case made and provided, to purchase the said lands after the expiration of fourteen months from and after the date

of the filing by him of said application and affidavit, on or about the 19th day of June, A. D., 1902, as aforesaid, the said Jay C. Freeman, on the 18 day of August, 1904, appeared before J. M. Burlingame, then and there the Register of the United States Land Office at Great Falls, Montana, which said land office was then and there the proper local land office for making final proof upon said homestead entry hereinbefore mentioned, with his final proof witnesses, William S. Kirkland and Richard T. Loss, and offered proof before the said Register and Receiver that he had settled upon said lands and premises and actually resided thereon and cultivated the same as required by, and within the meaning and intent of, the said homestead laws of the said United States; and then and there gave, made out and signed his deposition and swore to the same before the said J. M. Burlingame, Register of the United States Land Office as aforesaid, and at the same time filed and caused to be filed said affidavit and deposition and sworn statement, in the United States Land Office at Great Falls, Montana, said land office then and there being the proper United States Land office of the land district wherein the said lands are situated, and then and there offered, presented and delivered and filed said affidavit, deposition and sworn statement so made, signed and sworn to by the said Jay C. Freeman, to and with the Register and Receiver of the said United States Land Office, as proof of the settlement and residence upon and the cultivation

of the said lands and premises by the said Jay C. Freeman, as required by law and the statute in such case made and provided and the same were accepted by the said Register and Receiver of the said land office.

FOURTH.

And your orator showeth unto your honors that the said Jay C. Freeman, in the said affidavit and deposition and sworn statement, made, signed and sworn to by him, as aforesaid, and offered, presented, delivered to, and filed with, the said Register and Receiver, and accepted by them as proof of the settlement and residence of the said Jay C. Freeman upon said lands and of the cultivation of the same by the said Jay C. Freeman, among other matters and things, testified and deposed that he had actually resided upon said lands since July, 1902, and had resided on said lands continuously since July, 1902, except for a period of not to exceed three months in any one year, and each time the said Jay C. Freeman was absent, he had been away working for wages; that he had placed improvements on said land of the value of four hundred dollars and had constructed a wire fence around said property and had seeded ten acres of said land and had irrigated the same, and the said Jay C. Freeman procured from each of the said final proof witnesses, William S. Kirkland and Richard T. Loss, affidavits, depositions and sworn statements taken before the said J. M. Burlingame, as aforesaid, made, signed, and sworn to by the said final

proof witnesses before the said Register as aforesaid, to the same effect and corroborative and in aid of the said affidavit, deposition, and sworn statement, made, signed and sworn to by the said Jay C. Freeman, and filed the same, together with the said Jay C. Freeman's own affidavit, deposition, and sworn statement, in the local land office of the United States at Great Falls, Montana, and offered, presented, and delivered the same to the said Register and Receiver of the said land office, together with his own affidavit, deposition and sworn statement, as proof of the settlement and residence upon, and cultivation of, the said lands by the said Jay C. Freeman, as required by law, and all of the said affidavits, depositions, testimony, and sworn statements of the said Jay C. Freeman and his said final proof witnesses, so made, signed and sworn to, as aforesaid, and offered, presented and delivered to the said Register and Receiver of the said land office, as aforesaid, were, and each of them was, then and there taken and accepted by the said Register and Receiver of the said land office as proof of the settlement and residence of the said Jay C. Freeman upon the said premises. That on the said 23 day of August, 1904, the said Jay C. Freeman paid to the Receiver of the said United States Land Office at Great Falls, Montana, the sum of \$200, being payment for said land at the rate of \$1.25 per acre, and thereupon the said Receiver then and there issued to the said Jay C. Freeman, his final receipt No. 568 for the said moneys so paid to him by the said

Jay C. Freeman, in payment of said lands, as aforesaid, and the Register of the said land office likewise then and there issued to the said Jay C. Freeman, his certificate No. 568 for said lands, certifying that in pursuance of law the said Jay C. Freeman had purchased said lands, and upon presentation of said certificate to the Commissioner of the General Land Office, the said Jay C. Freeman should be entitled to receive a patent for said lands hereinbefore more particularly mentioned and described; that thereafter such proceedings were had that on the tenth day of February, A. D., 1905, a patent was issued by the said United States to the said Jay C. Freeman for the said lands, which patent was duly delivered to the said Jay C. Freeman and received by him.

FIFTH:

And your orator further showeth unto your honors that the said acceptance of the said affidavits, depositions and testimony of the said Jay C. Freeman, and of his final proof witnesses, William S. Kirkland and Richard T. Loss, as proof of the settlement and residence of the said Jay C. Freeman upon said lands and the cultivation of the same by him, as required by law, by the said Register and Receiver, and the issuance by the said Receiver of the said final receipt and the issuance of the said certificate of purchase by the said Register, as hereinabove mentioned and set forth, and the issuance of the said patent for the said tract of land by the United States, were had and done by the said of-

ficers of the said land office and the officers of your orator, the United States, in reliance by them and each of them upon the truth of the testimony and statements contained in the affidavits and depositions of said Jay C. Freeman, and in reliance by them and each of them upon the truth of the testimony and statements contained in the affidavits and depositions of said final proof witnesses, William S. Kirkland and Richard T. Loss, and in reliance upon the good faith of the said Jay C. Freeman and his final proof witnesses in the premises, and not otherwise.

SIXTH:

That the said affidavit and deposition of the said Jay C. Freeman, and the affidavits and depositions of the said final proof witnesses, William S. Kirkland and Richard T. Loss, were, and each of them was, then and there false, fraudulent and untrue, as was then and there well known to the said Jay C. Freeman, and to each of his said final proof witnesses, and made with intent to deceive the officers of the United States and with intent to fraudulently obtain patent to the said land hereinabove described and by fraud and deceit to procure a patent for the said lands by means of false and fraudulent testimony and statements made and contained in the said affidavits, depositions and testimony, in this, to-wit: That the said Jay C. Freeman had not and did not establish residence upon said lands or any portion thereof during the month of July, 1902, or at any time, or at all; that the said Jay C. Free-

man had not at the time of making his said proof and the filing of the same in the said land office, resided on said lands or any part or portion thereof, continuously, or in any other manner, or at all, since the month of July, 1902, or at any other time, and had not then, or at any other time, built a frame house sixteen by eighteen feet, with a shingle roof, and that the said Jay C. Freeman had not enclosed said lands with a three-wire fence, and that the said Jay C. Freeman had not, at the time of the filing of the said depositions and statements, sowed ten acres of said lands in grasses or grass seed, or that any part or portion of said lands had at any time been irrigated by the said Jay C. Freeman, and that the said Jay C. Freeman did not then and there, or at any other time, have improvements upon the said land of the value of four hundred dollars, or any other value or amount whatsoever. That your orator alleges the fact to be that the said Jay C. Freeman never did make a settlement upon said lands, or any part thereof, and did not establish his residence upon said lands, or any part thereof, and never did cultivate any part or portion thereof, and had no improvements thereon, and that each and every of the statements so made by the said Jay C. Freeman and his said final proof witnesses, as hereinbefore specifically mentioned and set forth, and which are contained in the said affidavits, depositions and testimony to prove settlement and residence by the said Jay C. Freeman upon said lands and the cultivation by the said Jay C. Free-

man of the same, as required by the homestead laws of the United States, are utterly false and fraudulent and untrue, in every particular, as he, the said Jay C. Freeman, then and there well knew.

SEVENTH:

And your orator further charges and alleges that the said testimony of the said Jay C. Freeman, as contained in said affidavit and deposition of said Jay C. Freeman, and the testimony of the said final proof witnesses, William S. Kirkland and Richard T. Loss, as contained in said affidavits and depositions, made by them, as aforesaid, was false, fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth, and the same were made, offered, presented and filed as proof of the settlement and residence of the said Jay C. Freeman, upon the said lands and the cultivation of the same, as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the Register and Receiver of the said United States Land Office at Great Falls, Montana, and to cause and induce the said officers and agents of your orator to believe that the said testimony contained in said affidavits and depositions were true, and that the said Jay C. Freeman, had, in fact, made and established a settlement and resided upon said tract of land and had cultivated the same as by law required, for the purpose of obtaining and procuring by means of fraud and deceit the issuance to said Jay C. Freeman, of a patent of the United States for the said lands hereinbefore described.

EIGHTH:

And your orator further showeth unto your honors that the said Jay C. Freeman, by means of the said false and fraudulent depositions and the false and fraudulent statements and testimony therein contained, given under the sanction and oath of the said Jay C. Freeman, and his said witnesses, imposed upon and deceived the said officers and agents of the said United States and caused and induced the said officers to believe that the testimony and statements contained in said depositions were true, and that the said Jay C. Freeman had actually settled and resided upon said lands and cultivated the same in the manner and to the extent as stated in said depositions, and that the said officers of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of said Jay C. Freeman and his said final proof witnesses, to be true, and relying upon the truth of the said testimony and statements, so falsely and fraudulently given and made by the said Jay C. Freeman and his said final proof witnesses, as aforesaid, and believing and supposing, on the strength of said depositions and testimony that the said Jay C. Freeman had actually made settlement and established his residence upon said land and had cultivated the same in the manner and for and during the period of time as therein stated by him, the said Jay C. Freeman, and his said final proof witnesses, William S. Kirkland and Richard T. Loss, were wholly deceived and misled into allow-

ing said proof to be filed and accepted and in permitting the issuance of said final receipt and the issuance of said certificate of purchase of said land and of the United States Patent therefor by the said officers of the United States, as hereinbefore set forth, and delivering the said patent to the said Jay C. Freeman.

NINTH:

And your orator further showeth unto your honors that since the issuance of said final receipt and certificate and patent for said lands to the said Jay C. Freeman, the said Jay C. Freeman has heretofore, on the 18 day of August, 1904, deeded the said lands to the said defendant, Frank D. Cooper, and that the said Frank D. Cooper is now in the occupancy, possession and enjoyment of the said lands and premises, but your orator alleges that by whatever pretended right or title the said Frank D. Cooper now holds possession of or occupies said land, the same is wholly void and ineffectual as against the rights of your orator; that the existance of said patent so fraudulently obtained and procured by the said Jay C. Freeman, as hereinbefore set forth, on its face entitled the said Jay C. Freeman, and those claiming under him, to exercise the right of absolute ownership on and over the said lands, and assert a legal title to the same, to which the defendant is not entitled; that if the said patent remains uncanceled and in force, the same may be used in fraud of your orator and all persons relying thereon, as a valid and substantial conveyance of the

legal title to said lands and premises.

TENTH:

And your orator further avers and charges that the said defendant, Frank D. Cooper, was not a purchaser in good faith and for a valid consideration of the lands herein involved; but if he purchased at all, purchased the same with full and complete knowledge that they were entered in fraud and in violation of the laws of the United States by his said pretended grantor, Jay C. Freeman, against the legal and equitable rights of the complainant; that said pretended purchase is void and should be so decreed in equity in favor of this complainant and against the said defendant, Frank D. Cooper.

ELEVENTH:

And your orator further showeth unto your hon-
ors that on or about the 13th day of December, 1909,
the said defendant Frank D. Cooper and his wife,
Alice G. Cooper executed and delivered to the de-
fendant George Heaton their contract in writing by
which they agreed and bound themselves to convey
to the said defendant George Heaton all of their
rights, title and interest in and to the lands herein
first above described; and your orator further
showeth that the said defendant George Heaton by
reason of the execution of said contract now claims
some right, title and interest in and to said lands ad-
verse to the rights of the complainant therein, but
your orator alleges that whatever interest the said
George Heaton now claims to have in said lands was

received and accepted by him with full knowledge of the fraud so perpetrated upon this complainant in the procurement of said patent, and that he is not a bona fide purchaser for value without notice of said fraud, and in equity and good conscience said contract, insofar as it affects the lands herein involved, should be cancelled and held for naught.

All of which actions, doings, and pretenses of the defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of this complainant in the premises.

IN CONSIDERATION WHEREOF, and for as much as the complainant is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity where matters of this nature are properly cognizable and relievable, and,

TO THE END, THEREFORE, that the said defendants, Frank D. Cooper and George Heaton, may full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged but not under oath (an answer under oath being hereby expressly waived) as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated; and to the end that the said defendants and all and singular their agents, employes, and servants may be forthwith and forever restrained and enjoined from setting up and asserting or claiming any rights, privileges, benefits, or advantages under and by reason

of said patent or said pretended deed of conveyance, or said agreement to sell said lands, herein before mentioned; and to the end that said patent so issued by the complainant to the said Jay C. Freeman may be declared void and cancelled; and that said pretended deed of conveyance from the said Jay C. Freeman to the defendant, Frank D. Cooper, may be, by decree of this Honorable Court, treated as a cloud upon the title of complainant to all and singular the lands at Paragraph I herein described, and the same removed as such; and that said agreement so entered into between the defendant Frank D. Cooper and his wife and the defendant George Heaton, insofar as the same affects the title to the lands herein involved, be cancelled and held for naught; And that the legal and equitable title thereto and the right of possession thereof be restored and given to complainant; and that the complainant have such other and further relief in the premises as the circumstances of this cause may require, and as to this Honorable Court may seem meet and proper, and as shall be agreeable to equity and good conscience.

May it please your Honors to grant unto the complainant the Writ of Subpoena to be directed to the said Frank D. Cooper, and George' Heaton, thereby commanding him at a certain time and under a certain penalty, therein to be specified, personally to be and to appear before this Honorable Court, and then and there to answer all and singular the premi-

ises, and to stand to and abide such further order, direction or decree therein as to this Honorable Court may seem meet.

(Signed) GEORGE W. WICKERSHAM,
Attorney-General of the United States.

JAS. W. FREEMAN,
United States Attorney, District of Montana.

UNITED STATES OF AMERICA,
District of Montana,—ss.

JAMES W. FREEMAN, being first duly sworn, deposes and says that he is the regularly appointed, qualified, and acting United States Attorney for the District of Montana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and facts therein stated and alleged are true to the best of his knowledge, information and belief.

JAMES W. FREEMAN.

Subscribed and sworn to before me this 7 day of December, 1909.

GEO. W. SPROULE,
Clerk U. S. Circuit Court, District of Montana.

NOTE BY CLERK:

The parts underscored are amendments to the original bill, allowed by the Court under order of May 23rd, 1912, hereinafter set forth.)

(Endorsed: Filed December 7, 1909, Geo. W. Sproule, Clerk.)

Thereafter, on December 7, 1909, subpoena in equity was duly issued herein as follows, to-wit:

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial
Circuit, District of Montana.*

IN EQUITY.

TO THE PRESIDENT OF THE UNITED
STATES OF AMERICA, GREETING:

TO,

FRANK D. COOPER, Defendant:

YOU ARE HEREBY COMMANDED, That you be and appear in said Circuit Court of the United States aforesaid, at the Court Room in FEDERAL BUILDING, HELENA, MONTANA, on the 3rd day of JANUARY, A. D., 1910 to answer a Bill of Complaint exhibited against you in said Court by THE UNITED STATES OF AMERICA, Complainant, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS: The Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 7th day of Dec., in the year our Lord one thousand nine hundred and nine and of our Independence the 134.

GEO. W. SPROULE,

Clerk.

By....., Deputy Clerk.

Memorandum, pursuant to Rule 12, Supreme Court,
U. S.

YOU ARE HEREBY REQUIRED to enter your

appearance in the above suit, on or before the first Monday of January next, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

GEO. W. SPROULE, Clerk.

Geo. W. Wickersham, U. S. Atty. Gen.,
Washington, D. C., J. W. Freeman,
U. S. Atty., Solicitor for Complainant.
Helena, Montana.

(Service of within subpoena accepted by James A. Walsh, attorney for defendant, December 18, 1909.)

(Endorsed, filed, December 20th, 1909, Geo. W. Sproule, Clerk.)

Thereafter, on March 29, 1910, defendant Cooper filed his answer herein, as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

ANSWER TO BILL OF COMPLAINT.

This defendant, now and at all times hereinafter, saving to himself, all, and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections, in the said Bill of Complaint contained, for answer thereto, or to so much thereof as this defendant is advised, it is material or necessary for him to make answer to, answering says:

I.

Admits that complainant was on the nineteenth day of June, 1902, the owner of said lands mentioned and described in the complaint, and that Jay

C. Freeman made and filed in the local land office his application to enter said lands as a homestead.

II.

Admits that the said Jay C. Freeman filed an affidavit in the local land office, setting forth the matters and things required by law to be set forth in such cases made and provided; and that he paid the legal fee, required and that the Receiver of said land office issued to him a receipt in the form required by law.

III.

Admits that it was incumbent upon said Jay C. Freeman to comply with the law, as to residence and cultivation upon said land to acquire the title thereto.

IV.

Admits that on or about the 18th of August, 1904, the said Jay C. Freeman offered proof of his settlement and residence upon said lands, and presented affidavit in compliance with the law, showing the matters and things necessary to acquire title thereto.

V.

Admits that said Jay C. Freeman presented a sworn statement that he had actually settled upon said land and resided thereon since July, 1902, within the meaning and intent of the homestead laws, and placed improvements upon said land to the value of Four Hundred Dollars, and constructed a frame house sixteen by eighteen, and had constructed a wire fence around said land, and had seeded ten acres of said land and irrigated the same; and

that said affidavit was also corroborated by the affidavits of William S. Kirland and Richard T. Loss; and that said proof was accepted by the Register and Receiver of said land office, and that said officers issued to him a certificate thereof, as provided by law, which entitled said Jay C. Freeman to receive a patent for said land; and thereafter such proceedings were had that on the 10th day of February, 1905, a patent was issued and delivered for said land, and denies all other matters and things contained in paragraph Three of the Bill of Complaint.

VI.

That whether or not the said officer of said land office accepted or relied upon said affidavits of said Jay C. Freeman, William S. Kirkland and Richard T. Loss, or relied upon any reports made by the special agents of the Land Department, this defendant denies that he had any knowledge or information thereof sufficient to form a belief; but denies that the affidavits or depositions of said Jay C. Freeman, William S. Kirkland, or Richard T. Loss were false, fraudulent or untrue, or that the matters and things stated in said affidavits were known to be false, fraudulent or untrue by the said Jay C. Freeman, William S. Kirkland or Richard T. Loss, or that said affidavits were made with intent to defraud said land office; or to procure patent by means of false or fraudulent testimony made or contained in said affidavits; denies that the said Jay C. Freeman had not established his resi-

dence upon said land, or that he had not resided upon the same, or that he had not built a house thereon of the size and dimensions stated, or that he had not enclosed the land with a wire fence to the extent stated in said affidavit, or that he had not seeded ten acres of said land and irrigated the same; and denies that the matters and things set forth in the depositions of said Jay C. Freeman, William S. Kirkland or Richard T. Loss were, or are, false or untrue; and denies each and every other allegation in paragraphs four, five and six of the Bill of Complaint.

VII.

Denies that the matters and things set forth in the affidavits and depositions of the said Jay C. Freeman, William S. Kirkland or Richard T. Loss were false, fraudulent or untrue, in respect to the several, or any of the matters therein stated, or that the same was offered or presented for the purpose of deceiving the Register and Receiver of the said land office, or to defraud the United States of the said lands; and denies each and every other allegation in Paragraph seven in the Bill of Complaint contained.

VIII.

Admits that some time after the issuance of said final receipt, the said Jay C. Freeman deeded and conveyed the said lands to this defendant, and that this defendant is now the owner and in possession thereof; but denies that the right and title of this defendant in and to said lands is wholly, in any

manner, or at all void, or ineffectual, as against the right of the complainant; and denies that the said patent was fraudulently obtained.

IX.

Admits that said patent on its face entitled the said Jay C. Freeman and those claiming under him to exercise the right of absolute dominion and ownership over said lands and assert legal title to the same; But denies that this defendant is not entitled to assert ownership and legal title to said premises, and denies said patent is, or can be used in fraud of any rights of the complainant; and denies each and every other allegation in paragraph nine of the Bill of Complaint.

X.

Denies that this defendant is not a purchaser in good faith, for a valuable consideration of the lands and premises described in the complaint; and denies that he purchased the same with full, complete or any knowledge that they were entered in fraud or in violation of the laws of the United States by said Jay C. Freeman; and denies that the said purchase is void, or that it should be so decreed, and denies that said premises were entered, or patent procured in fraud or violation of the laws of the United States.

XI.

And defendant avers that he purchased said lands in good faith and paid a valuable consideration therefor, and at the time he purchased said lands he believed and now believes that the said Jay C.

Freeman entered said lands and procured title thereto in good faith, and had in all things complied with the laws of the United States; and defendant avers that he did not have any notice or knowledge that the said Jay C. Freeman had not, or that the complainant herein claimed that he had not, in all things and in good faith complied with the laws of the United States, with reference to settling, residing upon and acquiring title to said land.

XII.

And defendant further avers that all the acts and deeds of the said Jay C. Freeman, with reference to establishing residence, residing upon and making improvements upon said land were such that the complainant herein could, with ordinary diligence, through its officers and agents, who were the employed in the business, and before the final proof was made, or certificate issued, have ascertained whether or not the said Jay C. Freeman had in all things complied with the law, with reference to settlement, residence, cultivation and improvements on said land necessary to acquire title thereto; and if any matters or things stated in said affidavits or depositions of said Jay C. Freeman or said witnesses were not true, the officers of said land office could have refused to accept final proof and to issue certificate therefor, or patent for said lands, and that complainant by reason of the negligence and laches of its officers is now estopped from asserting any right, title, claim or interest in or to said lands against this defendant.

XIII.

And defendant avers that since he purchased said land, and before the commencement of this suit, he in good faith entered into a contract with George Heaton, and in good faith sold said land to said Heaton for a valuable consideration, and said Heaton in good faith and for a valuable consideration, and without any notice of the claim of the complainant herein to said land, or any claim that the said Freeman had not in all things complied with the law in obtaining title to said land, and without any knowledge of any wrong doing, or a claim of wrong doing on the part of the said Jay C. Freeman, purchased the said lands from this defendant.

XIV.

And this defendant denies all and all manner of unlawful combination, confederacy and wrong doing wherewith he is by the said Bill charged, without this, that there is any other matter, cause or thing in said complainant's Bill of Complaint contained, material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the best of the knowledge of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES A. WALSH,

Solicitor for Defendant.

Service of the foregoing admitted and copy received this 29 day of March, 1910.

J. W. FREEMAN,

United States Attorney.

(Endorsed Filed March 29, 1910, Geo. W. Sproule, Clerk.)

Thereafter, on March 30, 1910, Replication was filed therein as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

REPLICATION.

This Replicant, saving and reserving to itself all and all manner of advantage of exception which may be had an taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant without that that any other matter or thing in said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct and humbly as in and by its said bill, it has already prayed.

JAS. W. FREEMAN,

United States Attorney.

(Service accepted March 30, 1910, James A. Walsh, Solicitor for Deft.)

(Endorsed, Filed March 30, 1910, Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy.)

Thereafter, on May 23, 1912, an order allowing amendments was duly made and entered herein, as follows, to-wit':

*In the District Court of the United States in and for
the District of Montana.*

Nos. 946, 947 and 948, United States vs. Frank D. Cooper.

These causes, heretofore submitted to the Court, came on regularly at this time for the decision of the court; whereupon it is ordered that the complainant be allowed to amend its bill of complaint in each of the above entitled causes by adding the name of George Heaton as party defendant, by interlineation as far as feasible, and by attaching a separate paragraph to properly state the case as to him, and thereupon complainant may have other subpoenas issued and proceed to service thereof upon Heaton.

Thereafter the actions may proceed as the parties are advised.

Entered, in open court, May 23, 1912.

GEO. W. SPROULE, Clerk.

Thereafter, on June 19, 1912, Notice and Amendments were filed herein, being as follows: to-wit':

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

NOTICE AND AMENDMENTS.

TO J. A. WALSH, ESQ., Attorney for the above named defendant, and FRANK D. COOPER, Defendant in the above entitled action:

You and each of you will please take notice that the complainant in the above entitled action did on the 14th day of June, 1912, amend its bill of complaint in accordance with an order of the Honorable George M. Bourquin filed and entered on May 23, 1912, by then and there making the following interlineations and insertions:

1. Page 1, lines 7 and 8, by adding "and George Heaton."

2. Page 1, line 8 by adding the letter "s" to the word defendant.

3. Page 1, line 16, after the word "Montana", by adding "and George Heaton, a resident of the Southern District of the State of Iowa."

4. Page 13, between lines 21 and 22, by inserting Paragraph eleven which is as follows:

"ELEVENTH"

And your orator further showeth unto your honors that on or about the 13th day of December, 1909, the said defendant, Frank D. Cooper and his wife Alice G. Cooper executed and delivered to the defendant George Heaton their contract in writing by which they agreed and bound themselves to convey to the said defendant George Heaton all of their

right, title and interest in and to the said lands herein first above described; and your orator further showeth that the said defendant George Heaton by reason of the execution of said contract now claims some right, title and interest in and to the said lands adverse to the rights of the complainant therein, but your orator alleges that whatever interest the said George Heaton now claims to have in said lands was received and accepted by him with full knowledge of the fraud so perpetrated upon this complainant in the procurement of said patent, and that he is not a bona fide purchaser for value without notice of ^{said} fraud, and in equity and good conscience said contract, insofar as it affects the lands herein involved, should be cancelled and held for naught."

5. Page 13, line 23, by adding the letter "s" to the word "defendant."

6. Page 13, line 31, by adding the letter "s" to the word "defendant".

7. Page 13, line 32, by adding "and George Heaton."

8. Page 14, line 5, by striking out the word "he", and inserting in lieu thereof the word "they."

9. Page 14, line 6, by adding the letter "s" to the word "defendant."

10. Page 14, line 7, by striking out the word "his" and inserting in lieu thereof the word "their".

11. Page 14, line 11, by inserting after the word "conveyance" the following, "or said agreement to sell said lands, hereinbefore mentioned."

12. Page 14, line 19, after the word "such" by

inserting, "and that said agreement so entered into between the defendant Frank D. Cooper and his wife and the defendant George Heaton, insofar as the same affects the title to the lands herein involved, be cancelled and held for naught."

13. Page 14, line 29, by adding "and George Heaton."

All of which will more fully appear from the original bill of complaint on file in the office of the Clerk of the United States District Court, District of Montana, to which reference is hereby made.

Dated this 19th day of June, 1912.

EDWARD A. LaBOSSIERE,
Assistant U. S. Attorney.

Due service of the within notice acknowledged and true copy thereof received this 19th day of June, 1912.

JAMES A. WALSH,
Attorney for defendant.

(Endorsed filed, June 19, 1912. Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy.)

Thereafter, on Sept. 17, 1912, an Order was duly entered herein, as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

ORDER.

It having been made to appear in the above entitled action that the defendant George Heaton is not a resident of and within the state and district of Montana, but that the said defendant is a resident

and inhabitant of St. Paul, in the district of Minnesota, and that personal service of process of this court cannot be had or obtained upon said aforementioned defendant within the district of Montana, and application having been made to this Court pursuant to Section No. 8, of the Act of March, 3, 1875, for an order of this court requiring and directing the said defendant to appear, plead, answer or demur to said complainant's bill of complaint on file herein by a day certain to be fixed and designated by this court;

Now, therefore, it is ORDERED that said application, be, and the same is, hereby granted, and you, the said George Heaton, one of the defendants in the above entitled cause, are hereby ordered and required and directed to be and appear in the district court of the United States, District of Montana, in the City of Helena, in the district of Montana, on the 4th day of November, 1912, and then and there to plead, answer or demur to complainant's bill of complaint exhibited against you in said court by the said complainant, the United States of America, to which said bill of complaint you are hereby referred, and to receive what said court shall have considered in that behalf.

Dated this 17th day of September, 1912.

FRANK S. DIETRICH,

Judge.

(Endorsed: Entered Sept. 17, 1912, Geo. W. Sproule, Clerk, By Harry Dunn, Deputy. Filed October 2nd, 1912, Geo. W. Sproule, Clerk, by C. R.

Garlow, Deputy.)

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA,

District of Minnesota,—ss.

I hereby certify and return that I served the annexed Order on the therein-named George Heaton by handing to and leaving a true and correct copy thereof with him, personally at St. Paul, in said District on the day of September, A. D. 1912.

WILLIAM N. GRIMSHAW,

U. S. Marshall.

By GEO. W. WELLS, Deputy.

Thereafter, on Dec. 2, 1912, the Answer of defendant Heaton was filed herein, being as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

IN EQUITY.

SEPARATE ANSWER OF DEFENDANT
GEORGE HEATON.

The answer of George Heaton, one of the defendants to the bill of complain as amended of the above named complainant:

This defendant, now and at all times hereinafter, saving to himself ^{all} and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

1. This defendant admits the allegations contained in paragraphs numbered First to Fifth, both inclusive, of complainant's bill of complaint as amended.

2. This defendant has no knowledge or information as to the truth or falsity of any of the allegations contained in paragraphs numbered Sixth, Seventh and Eight of said bill of complaint as amended, and can not set forth at to his belief or otherwise, whether or not any of said allegations are true, and calls for proof thereof.

3. This defendant has no knowledge or information as to the truth of falsity of any of the allegations contained in paragraph Numbered Ninth of said bill of complaint as amended, and cannot set forth as to his belief or otherwise whether or not any of said allegations are true, and calls for proof thereof, except that this defendant admits that the said J. C. Freeman, on the 18th day of August, 1904, deeded the lands mentioned and described in paragraph numbered First of the said bill of complaint as amended, to the said defendant Frank D. Cooper; but this answering defendant says that the said Frank D. Cooper is not now in the occupancy, possession and enjoyment, or either thereof, of said lands and premises; but that this defendant was in the occupancy, possession and enjoyment of said lands from the 1st day of August, 1910, until the 22nd day of April, 1911, under and by virtue of a contract for the sale of said lands executed and delivered to this defendant on the 13th day of De-

ember, 1909, by said Frank D. Cooper and Alice G. Cooper, his wife; and that ever since the 22nd day of April, 1911, the said lands have^{been} and still are in the occupancy, possession and enjoyment of the Great Falls Farm Land Company, a Montana corporation, under and by virtue of an assignment of the contract above mentioned, executed and delivered to the said Great Falls Farm Land Company by this defendant on the said 22nd day of April, 1911; and that the right or title by which this said defendant so held possession and occupied said lands was, and the right to title by which said Great Falls Farm Land Company now holds possession and occupies said lands is, valid and effectual as against the rights of complainant; and that this defendant was, from the 1st day of August, 1910, until the 22nd day of April, 1911, and the said Great Falls Farm Land Company now is entitled to exercise the right of absolute ownership on and over said lands, and to assert a legal title to the same; and that this defendant does not believe that, if the said patent remains uncancelled and in force, the same may be used in fraud of the complainant and all persons relying thereon, as a valid and substantial conveyance of the legal title to said lands and premises.

4. That this defendant has no knowledge or information as to the truth or falsity of any of the allegations contained in paragraph numbered Tenth of said bill of complaint as amended, and cannot set forth as to his belief or otherwise, whether or

not any of said allegations are true, and calls for proof thereof, except that this defendant does not believe that the said defendant Frank D. Cooper was not a purchaser in good faith and for a valid consideration of the lands, herein invlved; and does not believe that the said defendant Frank D. Cooper purchased the said lands with full and complete knowledge, or any knowledge at all, that they were entered in fraud or in violation of the laws of the United States by the said J. C. Freeman, against the legal and equitable rights of the complainant; and does not believe that said purchase by said defendant Frank D. Cooper is void and should be so decreed in equity in favor of said complainant and against the said defendant Frank D. Cooper, or against this defendant or his successors in interest.

5. This defendant has no knowledge or information as to the truth or falsity of any of the allegations contained in paragraph numbered Eleventh of said bill of complaint as amended, and cannot set forth as to his belief or otherwise, whether or not any of the said allegations are true, and calls for proof thereof, except that this defendant admits that on or about the 13th day of December, 1909, the said defendant Frank D. Cooper and his wife, Alice G. Cooper, executed and delivered to this defendant their contract by which they agreed and bound themselves yo convey to this defendant all of their rights, title and interest in and to the lands herein involved; and this defendant says that he procured the execution and delivery of said contract

in good faith and for a valuable consideration; and the he, by reason of the execution and delivery of said contract, had, from the 1st day of August, 1910, until the 22nd day of April, 1911, and that the said Great Falls Farm Land Company had, ever since the said 22nd day of April, 1911 and now has, the right of absolute ownership over, in and to said lands; and that the interest heretofore asserted and claimed by this defendant in said lands was acquired by him under the contract hereinabove referred to, and without any knowledge of any fraud in any maner perpetrated upon said complainant in the procurement of the said patent; and that this defendant was a bona fide purchaser for value without notice of any fraud; and that this defendant does not believe that, in equity and good conscience, said contract, in so far as it affects the lands herein involved, should be cancelled and held for naught.

6. For further answer and defense to the said bill of complaint as amended, this answering defendant avers and says: That on the 13th day of December, 1909, this defendant made and entered into a contract in writing with said defendant Frank D. Cooper and Alice G. Cooper, his wife, wherein and whereby said Frank D. Cooper and Alice G. Cooper, his wife, sold and agreed to convey, in fee simple by warranty deed, to this defendant, the southeast quarter of the southwest quarter of section eight (8), the east half of the northwest quarter and the southwest quarter of the northwest quarter of section seventeen (17), township nineteen

(19) north of range three (3) west of the Montana principal meridian, containing one hundred and sixty (160) acres, situate, lying and being in the County of Cascade, State and District of Montana, together with other lands situate in the counties of Cascade and Lewis and Clark in said State and District of Montana; that in and by the said contract this defendant agreed and bound himself to pay to the said Frank D. Cooper and Alice G. Cooper, his wife, the sum of five and 70/100 Dollars (\$5.70) per acre for all of said lands mentioned in said contract, including the lands herein involved, in certain specified installments, which sum was the full value of the lands and premises by said contract agreed to be conveyed; that this defendant and his successor in interest under said contract, the said Great Falls Farm Land Company, have fully paid all the installments due under said contract up to this time, and are legally bound to pay the balance thereof; that, under the terms and provisions of said contract, possession of the lands herein involved was given to this defendant on the 1st day of August, 1910, and that upon said date this defendant entered into the occupancy, possession and enjoyment of said lands. And this defendant further says that he did not, at the time of the execution of the contract hereinbefore mentioned, or at any other time, have any knowledge, information or notice of any fraud or improper conduct in reference to procuring a patent to said lands; that under the terms and provisions of said contract, and by virtue of the full perform-

ance on the part of this defendant of all the covenants therein contained by him to be kept and performed, up to the 22nd day of April, 1911, this defendant became and was a bona fide purchaser of said lands for a valuable consideration.

And this defendant further says that he did, on the 22nd day of April, 1911, for a valuable consideration, sell, assign, transfer and set over to the Great Falls Land Company, a Montana corporation, the above mentioned contract and all of his right, title and interest therein and thereunder.

7. And this defendant, in addition to the foregoing answer avers that the cause of action, if any there may be arising to the complainant on account or by reason of the several allegations and complaints in its said bill contained, did not accrue within six years before the said bill was filed and subpoena thereunder served upon this defendant; and this allegation defendant makes in bar of the complainant's bill and prays that he may have the same benefit therefrom as if he had formally pleaded the same.

WHEREFORE, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint as amended material to be answered, according to his best knowledge and belief, humbly prays this honorable court to enter its decree that this defendant be dismissed with his reasonable costs and charges in his behalf most wrongfully sustained, and for such other and further relief in the premises as to

this honorable court may seem meet and in accordance with equity.

GEORGE HEATON.

By E. C. DAY,

His Solicitor.

DAY & MAPES,

Solicitors and of counsel for

the defendant George Heaton.

Helena, Montana, Dec. 1, 1912.

(Endorsed: Filed December 2nd, 1912, Geo. W. Sproule, Clerk, By C. R. Garlow, Deputy.)

Thereafter, on Dec. 23, 1912, Replication was filed herein as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

REPLICATION TO SEPARATE ANSWER OF
GEORGE HEATON.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, and for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or

avoided, traversed, or denied is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

J. W. FREEMAN,
United State Attorney
District of Montana.

Due service of the within replication acknowledged and true copy thereof received this 23rd day of December, 1912. Day & Mapes, Attorneys for Defendants.

(Endorsed: Filed Dec. 23, 1912, Geo. W. Sproule, Clerk, By C. R. Garlow, Deputy.)

Thereafter, on January 28th, 1914, Decree was filed and entered herein, as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

DECREE.

This cause came on to be heard at this term, to-wit, on the 15th day of January, 1914, upon the pleadings and the proof, and was argued by counsel, and

It appearing to the court that a bill in equity was filed in this court on the 7th day of December, 1909, against the defendant, Frank D. Cooper, and that subpoena was duly issued; that thereafter said defendant filed his answer to said bill of complaint, and

It further appearing that by an order of this

court made on the 23rd day of May, 1912, the said George Heaton was made a party to said suit; that notice was duly issued and served upon said defendant, George Heaton, and that thereafter, on the 2nd day of December, 1912, said George Heaton filed his answer herein, and

It further appearing, and the court finds, that the patent to the following described land, to-wit: The southeast quarter of the southwest Quarter of Section Eight (8) the east half of the northwest quarter and the southwest quarter of the northwest quarter of section seventeen (17), township nineteen (19) north, range three (3) west, containing one hundred and sixty (160) acres, situate, lying and being in the county of Cascade, state and district of Montana, was fraudulently procured by Jay C. Freeman; that the said Frank D. Cooper is not and was not a bona fide purchaser of said land for value without notice of the fraud perpetrated upon complainant, and,

It further appearing that by the terms of a certain contract in writing date December 13, 1910, the said defendant, Frank D. Cooper, agreed to sell, and the said defendant, George Heaton, agreed to buy, said lands, the purchase price thereof to be paid in installments covering some six years, and upon payment in full said Frank D. Cooper is to convey said land by warranty deed to said defendant, George Heaton; that more than six years has expired from the date of the issuance of said patent to the date of service of notice upon said George Heaton, and that

the cancellation of said patent has become impracticable since said suit has been brought, and

It further appearing that the value of said land, at the date of the execution of said contract, was five and 70/100 dollars (\$5.70) per acre, and that complainant is entitled to the value thereof, and the court being fully advised in the premises;

IT IS ORDERED, ADJUDGED and DECREED that the said complainant, the United States of America, do have and recover of and from the said defendant, Frank D. Cooper, the sum of Nine hundred twelve dollars (\$912), with interest thereon at the rate of eight per cent per annu, from the 13th day of December, 1909, amounting to three hundred and 96/100 dollars (\$300.96), making a total of twelve hundred twelve and 96/100 dollars (\$1212.96), together with its costs incurred herein taxed at, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that unless said amount is paid by the defendant, Frank D. Cooper, the said defendant, George Heaton, shall pay the same to complainant from the unpaid purchase money owing by the said George Heaton to the said defendant, Frank D. Cooper, upon his said contract of purchase of said lands, when said George Heaton was made a party thereto and appeared herein, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that such payment, if made by the said defendant, George Heaton, shall discharge said

purchase price to the extent thereof, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that complainant have a lien for the sum of twelve hundred twelve and 96/100 dollars (\$1212.96), and its costs herein incurred taxed in the amount of.....upon the above described land as security and foreclosure thereof.

GEO. M. BOURQUIN,
Judge.

(Endorsed: Filed January 28, 1914. Geo. W. Sproule, Clerk.)

WHEREUPON, said pleadings, process and final degree are entered of final record herein, in accordance with the law and the practice of this court.

WITNESS my hand and the seal of said court at Helena, Montana, this 28th day of January, A. D. 1914.

(SEAL) GEO. W. SPROULE,
By C. R. Garlow,
Deputy Clerk.

(Endorsed: Filed, January 28th, 1914. Geo. W. Sproule, Clerk, By: C. R. Garlow, Deputy Clerk.)

BE IT REMEMBERED That this cause came on for hearing on the 30th day of June, 1910, before Hon. O. T. Crane, Standing Examiner in Chancery, at Helena, Montana, and the following proceedings had:

Edgar S. Foley, being duly sworn, and interro-

gated by Mr. Skinner, counsel for plaintiff, testified as follows:

“My name is Edgar S. Foley. I am 39 years of age; reside at Helena, Montana; occupation, Special Agent of the General Land Office. Have occupied that position for six years, and during all that time was in Montana. Prior to that I was stock breeding and ranching in North Dakota; went into that business about the year 1888. I made an examination of the J. C. Freeman entry, described as follows: the southeast quarter of the southwest quarter of section eight (8) and the east half of the northwest quarter, and the southwest quarter of the northwest quarter of Section seventeen (17), township nineteen (19) north, range three (3) West. I made the examination about the 16th of September, 1906. I was instructed to do so by our Chief of Division, or Special Agent in charge. I had occasion to examine almost all of the land comprised within the limits of Township 19, north of Range 3 West, and in so doing I identified a great many section corners, and identified this land by means of known corners along fences, which was part of an enclosure that this entry lay in. The improvements I found at the time I made this examination were, a frame cabin about 12x16 with a shingle roof; there was no window in the cabin; no stove-pipe hole; a door frame but no door. There were no other improvements in the way of cultivation or plowing. I found that the door frame was absolutely ^{entirely} untouched, or unmarred by screws or nails or hinges, or anything of that

nature. It had never been used. I did not have any talk with Mr. Freeman at that time. I was told that he was not in the country. This land is within the enclosure of Mr. Cooper. Mr. Cooper lived in the township east of this township, and about seven miles east I should judge. It was not fenced on the line, or cross fenced, but was embraced within the Cooper enclosure. There was no fence on the entry proper, except that it was intersected by a piece of fence, but the enclosure as a whole was not included in a fence, that is, the lines of the entry were not bounded by a fence. I did not look for any evidence of an irrigation ditch on a homestead entry because it was immaterial. Since I have been in Montana my business as a Special Agent has been examining all classes of entries under the Federal Land Laws.

CROSS-EXAMINATION BY MR. JAMES A. WALSH:

I lived in North Dakota since 1878; on the Little Missouri River and on the Big Missouri River. I never took up any government land myself. Mr. Kinsey pointed out this land to me. He was instrumental in bringing this case to the attention of the Department. He met me when I went to examine the land. I had made arrangements to meet him, and I stopped at his place while out there. I can't say whether he or his son Frank was with me. I cannot say whether I had their team or not. I was over these lands a number of different times; sometimes I would use Mr. Kinsey's team, and sometimes

I would use a Cascade team. I am not sure at this time whether I had his team or not. I might have had. I cannot say on what portion of the land the cabin was. It was right close to the outer edge of the Cooper enclosure, and at that point, I think it was on a section line. I know almost every corner in that township. I had to know them. I recognize the corners by the way they are now marked; the sections are marked on the west and east sides. A section corner on a township line running north and south is marked on the north and south sides, indicating so many miles on the north and south sides of the township corners, and on the east and west side of the township line, they are marked on the east and west sides of the township lines, they are marked on the east and west, indicating so many miles to a township corner. I went into the cabin. It was a good cabin, outside of my testimony as regards the door and window and no stove pipe hole. It had a shingle roof. It had no chimney and there was no stove-pipe hole, through the roof or through the side. The cabin was there the last time I had occasion to go over the ground. It had a gable roof, it is not what is called a shed roof. I just stepped the size of it. It was either 12x14 or 12x15. It would not have been material anyway even if it had been bigger. There was no plowed land around the cabin. There was some plowed land on an adjacent claim. There was a desert claim of Mr. Freeman's that lies not far from it, I think there is some plowed land on that. I didn't look for

any irrigating ditches. I don't on a homestead. I didn't go into any question of trying to distinguish between the fences that belonged to Mr. Cooper and Mr. Freeman. I said there was some fence intersecting a portion of this fence. I did not look where each of the corners were.

I have no information as to the conditions that existed there with reference to fences in August, 1904. Mr. Kinsey has been quite officious in assisting me in work up there; he has given me information, and given the office more or less assistance. I certainly know where the corners are; I would not report on it unless I knew; I was on the land. I went all over the land. I did not go to the quarter corners. There is very little level land there. All of that country is rolling. I think I can stand at one place and see all over the land. There had been no cultivation. You could not stand in one place and see whether or not there had been any cultivation. That would be a hard thing to determine after a lapse of years, particularly after it had grown back to grass. It is a pretty rocky piece of land; more or less rocks on all of that land. There is a spring close to the house. There is a little coulee in there that has water in it.

William L. Kinsey, being duly sworn, and interrogated by Mr. Skinner, testified as follows:

“My name is William L. Kinsey, fifty-three years old; my occupation is farmer. I live in Cascade County, Township 19 No. Range Three West; have lived there since April, 1904. I have known Mr.

Cooper the defendant in this case, for nearly twenty-four years. He was in the sheep business. I have known him about ever since I was in Montana. I am acquainted with Mr. J. C. Freeman. Have known him probably eight or nine years. I knew him before I moved out there. He was working for Mr. Cooper. He was working for Cooper during the summer of 1904; he was working for him anyway during a portion of it. I am acquainted with the Freeman entry which is located in Section 8 and 17, Township Nineteen North and Range Three West. I first saw the entry in February or March, 1904. I was on the entry a number of times during that summer. I remember the occasion of Freeman making final proof. I can not say how many times I had been over the entry prior to that time; probably five or six times. Prior to final proof there was a house started there that had, if I remember right, the east and west sides were built up, and one or two boards on the ends, and I think a pair of rafters on each end. I was right up to the house where I could see it. There was nothing in the house; there wasn't any floor in the house; there was no roof on it at that time. There was some work done on it in June of that year by Mr. Gardipee, the gentleman sitting next to me. He was working, he finished up the roof, and put the rafters on, finished up the ends; I saw him beginning on it in June. I never saw Mr. Freeman there. I was out there with Special Agent Foley when he made the examination. I was at the place with him.

The roof was on and a floor laid, and a hole left for a door and window; there was no stove-pipe hole. That was all the improvements I saw. I never saw any land broken up, and there wasn't any of it fenced, at the time he made the final proof. I never saw Mr. Cooper on the Freeman Claim.

CROSS EXAMINATION BY MR. WALSH:

I know nothing at all about the condition that existed in that country prior to April, February, or March, 1904. That is the first time I went into that locality. The occasion of my visiting the Freeman claim was that I was looking for land through there. There was a house started. I don't know anything about the conditions existing before I went to the claim. All I know is what I saw there. I am acquainted with Mr. Freeman. Later on the roof was on and the floor laid. There were no other improvements or buildings. I know about where the lines are. I didn't go all over the land at that time, but I was all over it during that summer and have been over it several times since. I never took the corner stones, but I was over it with Mr. Foley. I can locate the land by the section corners. Sometimes a man might be mistaken where a stone had shelled off or anything. I would not be certain, but I believe there is one forty in section eight and three in seventeen.

Edwin R. Jones, being duly sworn, and interrogated by Mr. Skinner, testified as follows:

"My name is Edwin R. Jones. I am twenty-four

years old, my residence is St. Peter, Montana; and my occupation, stockraising. I have lived there since July, 1904. Prior to that time I lived at Great Falls, Montana. I am acquainted with the Freeman Entry. I saw the cabin on it. It wasn't finished when I saw it; it lacked a door and it lacked a window. I didn't notice whether or not it had a chimney or a stove-pipe hole. The first time I saw the land there was no fence there. That was possibly in the spring of 1905, early. I knew Freeman; met him once or twice. He was employed by Mr. Cooper, as a sheep-herder or camp tender, I couldn't say just what it was. There was no one living on the Freeman claim when I first knew it. I did not observe any evidence of any one having lived there. I was not over this claim prior to 1904.

CROSS-EXAMINATION BY MR. WALSH:

I know nothing about this claim prior to July, 1904; never saw it before that date. I knew nothing about Freeman prior to that time, nor for whom he was working. When I say he was working for Cooper, I mean after that date. I saw the Freeman claim in 1905. There was a house on it, but it was not finished. The house looked to me as if it had just been built; it had never been inhabited, I don't think, by the looks of the lumber on the floor. That was in the spring of 1905. The cabin might have been there for a year, but no longer, from my observation. I met Freeman first in July, 1904.

Frank J. Kinsey, being duly sworn, and interrogated by Mr. Skinner, testified as follows:

“Frank J. Kinsey is my name; age is twenty-seven; ranching is my occupation; Post Office address, at Simms, Montana. I am the son of William L. Kinsey who just testified. I have lived in Montana about twenty-four years, around St. Peters and Cascade. I have a claim of my own in Section twenty-one. Moved there in 1904, sometime in April. I had been out there before in 1902, I was riding after some horses. I am acquainted with the J. C. Freeman entry. The first time I saw it was in 1902. There wasn't anything on it at that time in the way of improvements. The next time I saw it, was in 1904, last of February, or First of March. There was a house started on it at that time, and no roof on it, and no ends in it at all; just the sides propped up there. No furniture in it; no floor, nor no cooking utensils of any kind. There was some more work done on the house during the summer. I couldn't say who did the work; I didn't see who did the work on it. I saw the house several times after that. After the new work had been put on it, it had a shingle roof and the ends had been put in, and the floor down, there was a hole cut for a door, but there was no door and no place for a window, and I don't think there was ^astove-pipe, or a place for a stove-pipe or chimney. There was nobody living on the claim when I first saw it. There was no one I ever saw live on it. There were no other improvements on the claim. I knew Mr. Freeman when he

was working for Mr. Cooper. That was the last of June or First of July, 1904. That was the first time I became acquainted with him. That is the first time I ever knew him; he told me he was working for Mr. Cooper. I saw Mr. Cooper in and around this claim a great many times.

CROSS EXAMINATION BY MR. WALSH:

I have known the Freeman claim since 1902. The first time I saw it I was riding for horses. I did not know the boundaries of the claim exactly at that time. I did not examine to see whether or not there were any improvements on it. I was camped close there, and I was riding for the horses; I rode most all over it. The next time I saw it was in 1904. I couldn't say exactly just what time the work was done upon the house; sometime after June. I saw it almost every day during the month of April and May up until the last of June. There was a part of the house there in April. I did not see any fence on the claim at that time. Couple of years anyway, later, before they had a fence on it. I first knew Freeman the last of June or first of July, 1904.

“From the time I went out there in April 1904, he (Cooper) was up in that part of the country a good many times; I know one time, I was building a fence on my father's homestead, between there and the Carnell claim and he was talking about putting in some of the fence around the Carnell claim, he said it was his.”

John Lavergure, being duly sworn, and interro-

gated by Mr. Skinner, testified as follows:

“My name is John Lavergure. I am twenty-seven years old and live at St. Peters, Montana. Have lived there about nineteen years. Am a ranch hand. I knew Mr. Cooper in 1904 or 1905. I knew Mr. Freeman. I knew him before I went to work for Mr. Cooper. I didn't know who he was working for when I first knew him. Mr. Cooper had his sheep branded, but I don't know his brand. I know Mr. Freeman. He was working for Mr. Cooper when I worked for him. I think I worked for him about three months. I know where the Freeman claim is located. I never saw anyone living on the Freeman claim. I have been in the Freeman cabin. At the time I worked for Mr. Cooper there was no door in the cabin; as to the roof, I never took any particular notice of it, nor the floor either. I don't remember just the year that final proof was made on this claim, but if I am not mistaken, that was the same year I was working for Mr. Cooper.

CROSS EXAMINATION BY MR. WALSH:

I do not know when Kinsey moved out from Cascade. I was on the Freeman homestead when I was working for Mr. Cooper. I don't know whether that was in 1904 or 1905. I worked for Cooper along about three months. I know Freeman. He was working for Cooper the same time I was working there. He was not at the Crown Butte Ranch. I don't know what they call the place, but he was running the sheep, he was running a lambing camp.

Thomas J. Short, being duly sworn, and interrogated by Mr. Skimmer, testified as follows:

“My name is Thomas J. Short. I am fifty-three years old, live in Great Falls and am tending bar there. I moved there in 1891. I am acquainted with Mr. Cooper; have known him for about eight or nine years. I filed on a claim in Township 19.

Q: How did you come to file on that claim, Mr. Short? Just tell the circumstances surrounding it, reason for it?

BY MR. WALSH: We object to that as incompetent, irrelevant and immaterial, not a matter involved or any issue in this case, don't tend to prove any of the issues in this case.

(Objection over-ruled to which defendant excepted.)

A. Mr. Cooper asked me if I had my right to file on land; I told him I did, and I filed on it that way.

I guess there was something said about how much I was to receive for using my filing right for Mr. Cooper; I have forgotten; a hundred dollars, or something; I have forgotten now; but I think it was in that neighborhood. After the conversation with Mr. Cooper, a certain attorney came up and we went up to the Court house and filed on the land. Mr. Cooper paid the filing fee. He did the same thing with reference to my daughter. I do not know where the land was located. The description of the land I filed on was furnished by Mr. Cooper. I never was to the land. I never got the chance to go to the land.

CROSS EXAMINATION BY MR. WALSH:

I had the conversation with Mr. Cooper at the Grand Hotel. I think Mr. Cooper was to give me One Hundred Dollars. Mr. Cooper made the same arrangements with both of us. My daughter wasn't there at the time, but she went to the Court house with us. I just told her what Mr. Cooper told me, and that's all that was said. I did not get anything out of it. I was supposed to when I proved up on it in fourteen months. I never proved up on the land. I signed the usual form of affidavit for homestead entry. I don't know what I signed exactly; my daughter signed the same. I don't know why we didn't make final proof.

RE-DIRECT EXAMINATION.

I don't remember whether I signed the papers that Mr. Cooper and his attorney presented to me, or if I had papers made out. I had no interest in my daughter's claim.

John Gardipee, Sr. being duly sworn, and interrogated by Mr. Skinner, testified as follows:

"My name is John Gardipee, Sr. I live at St. Peter's Montana; lived there seven years. I know Mr. Cooper; have known him ten years. I know the Freeman claim out there. It is about a mile from my house. I moved out to my claim in 1903. When I first saw the house on the Freeman claim there were two sides and the rafters; no roof and no floor in. I am the Mr. Gardipee who afterwards completed the house, or put some more work on it. I put

the ends on and the rafters on the roof. I first talked with Mr. Cooper about doing the work, and settled with Cooper after the work was done. There wasn't any other buildings or improvements that I could see, on the Freeman claim when I first saw it. At the time I was there, besides the house there was a pile of lumber and shingles and some nails and a stove, and that is the same shingles and nails that I used in completing the house.

CROSS EXAMINATION BY MR. WALSH:

I lived on my claim since 1903. I completed the house on the Freeman claim in 1904, about August, the latter part of August, some time. I talked with Mr. Cooper about repairing the house and settled with him. It might have been in August, or it might have been in September; I can't remember. I did other work for Mr. Cooper. These were the only improvements I could see on the land. I cannot say where the lines of the land lie. I do not know where the lines are.

RE-DIRECT EXAMINATION; BY MR.
SKINNER:

I did not see any improvements within three hundred yards of the Freeman claim. I just went out there and worked on the house. That is all I know.

John B. Gardipee, being duly sworn, and interrogated by Mr. Skinner, testified as follows:

"My name is John B. Gardipee; I am twenty-seven years old; reside at St. Peters, Montana; have

lived there since 1903; When I first went out there I wasn't home all the time; I was single at the time and worked out all the time, pretty near; but the last couple of years I have been home all the time. In the spring of 1903 I was out there off and on. Cooper traveled through that country in the years 1902, 1903 and 1904. That is as much as I know. I never paid any attention to what he was doing. I noticed that he was traveling there off and on. I know where the Freeman claim is. I had been up there before my father did some work on the house. I first knew the Freeman claim in 1904. The cabin had just two sides up then that I know of. There was no roof, and no floor, and there was no fence around it. I never saw any ditch on the land. I worked for Cooper in 1905. I knew Freeman. He worked for Cooper part of 1904, and I think all of 1902 and 1903.

CROSS EXAMINATION BY MR. WALSH:

I know now where the lines of the Freeman claim are. I didn't in 1904. I never saw any fence or ditch on the Freeman homestead. I saw a ditch on the desert claim adjoining the homestead. At that time I didn't know where the lines were between the homestead and the desert claim, but I do now.

William Belgrade, being duly sworn, and interrogated by Mr. Skinner, testified as follows:

“My name is William M. Belgrade. I am twenty-six years old, live at St. Peter's Mission, and have lived there all my life. I know Mr. Cooper; have

known him for eight or ten years. I am acquainted with J. C. Freeman, and am a little bit acquainted with the Freeman claim. I knew it when I worked for Mr. Cooper about 1905, I guess.

Q. What was the condition of the cabin when you first saw it as to being completed, the doors and windows, in 1905?

BY MR. WALSH: Objected to as being incompetent, irrelevant, and relating to matters arising after the proof was made.

(Objection over-ruled and exception noted.)

A. The door wasn't in when I seen it.

I didn't notice the window. There were nails and lumber inside of the house. I am the same Belgrade that took up a homestead out in that section of the country. My homestead was south of the Freeman entry. I was out to Mr. Cooper's, and he asked me why I didn't take up a homestead. He showed me a piece of ground there, and I told him that I would take it up. I went to Great Falls to make out the papers. Mr. Cooper went with me. I don't remember who made out the papers. I don't recollect whether I signed any papers or not. Nobody gave me a description of the land. Mr. Cooper just showed me the land when we got there, but that wasn't the land that I filed on. It was another piece of ground. I made just one filing. I was mistaken in the land. That was on this open piece of land and that is what I intended to file on. I didn't know it until I proved up. I guess Cooper gave the Receiver of the land office the money. I think he

paid for making out the papers. I never paid out anything. I have the papers. Cooper gave them back to me when I made the relinquishment.

CROSS EXAMINATION BY MR. WALSH:

I knew Freeman when I started to work for Mr. Cooper in 1905, and I knew Mr. Cooper about the same time. I first went to the Freeman cabin in 1905. There was no door there at that time. I did not pay much attention as to whether or not the door had been taken off, but I noticed there was no door there. I don't know anything about the window. With reference to taking up a homestead, Cooper asked me why I didn't use my rights and pointed out a piece of land I could take, and I went to Great Falls and filed on land, but I filed on another piece of land and afterwards relinquished it, and that is all there is about that homestead.

It was thereupon admitted that the notice of intention to make final proof was published in the usual form and for the usual period, and the affidavit of publication filed; that the patent had been issued for the land in the usual form, on the date mentioned, and that the usual affidavit of homestead entry had been made, and that the land was thereafter purchased by and conveyed to the defendant Cooper.

Thereupon plaintiff introduced in evidence the testimony of Jacy C. Freeman and his witnesses, Richard T. Loss and William S. Kirkland, in making final proof, which testimony is as follows:

TESTIMONY OF RICHARD T. LOSS, FINAL
PROOF WITNESS:

Richard T. Loss, being called upon as a witness of final proof, testified as follows:

Q. 1. What is your name, age and Post Office address?

A. Richard T. Loss, age 29 years, P. O. Cascade, Montana.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes, with both.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land?

A. Grazing only, cannot be cultivated.

Q. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

A. July, 1902, settled, built house and established residence.

Q. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. Claimant has been there most of the time, he is unmarried.

Q. 7. For what period or periods has the settler

been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

A. He has worked out some, his total absence does not exceed three months in any one year since entering the land.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. None of the land has been broken up as it is most valuable to claimant in its natural condition as grazing land, the land is too rocky to admit of being broken up and cultivated and has been used only as grazing land, about 50 head of stock has been grazed there.

Q. 9. What improvements are on the land, and what is their value?

A. House 16x18, shingle roof, all fenced, post and three wires, irrigation ditch through it. Improvements are worth \$400.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes?)

A. No.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. Not that I know of, think not.

Q. 12. Are you interested in this claim; and do

you think the settler has acted in entire good faith in perfecting this entry?

A. Not interested; think claimant has acted in good faith.

(Signed by witness, and duly sworn to before the Register of the United States Land office at Great Falls, Mont.)

TESTIMONY OF WILLIAM S. KIRKLAND,
FINAL PROOF WITNESS.)

Q. 1. What is your name, age, and post office address?

A. William S. Kirkland, age 24 years, P. O.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes, with both.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

A. Grazing.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

A. July 2, 1902, settled, built house and commenced residence.

Q. 6. Have claimant and family resided continu-

ously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. Claimant has been there most of the time; he is unmarried.

Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

A. He has been working near there some, but his absence does not aggregate three months in any one year.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. About 50 head of stock grazed on the land all the time. None of it has been broken as it is most valuable when not broken, it is too rough and stony to break.

Q. 9. What improvements are on the land, and what is their value?

A. Good house 16x18 feet, shingle roof, post and three wire fence all around, irrigating ditch, worth \$400.00.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes).

A. No.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. No.

Q. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

A. No. Claimant has acted in good faith.

(Signed by witness, and duly sworn to before the Register of the United States Land Office, at Great Falls, Montana.)

TESTIMONY OF J. C. FREEMAN, CLAIMANT:

Q. 1. What is your name, age, and post office address?

A. Jay C. Freeman, age 30 years, Post Office, Cascade, Cascade County, Montana.

Q. 2. Are you a Native Born citizen of the United States, and if so, in what State or Territory were you born?

A. Born in Missouri, U. S. A. Now live on this land in Cascade County, Montana.

Q. 3. Are you the identifal person who made homestead entry No. 13568, at the Helena Land Office on the 2nd day of July, 1902, and what is the true description of the land now claimed by you?

A. Yes, and claim SE 4 SW 4 Sec. 8, E 2 NW 4, SW 4 NW 4, Sec. 17, T. 19 No., R 3 West.

Q. 4. When was your house built on the land and when did you establish actual residence there? (Describe said house and other improvements which you

have placed on the land, giving total value thereof.)

A. July 1902, settled, built house and established residence House 16x18 feet, frame house, shingle roof, all fenced, 3 wire fence, posts of cedar one rod apart, ten acres in grass seed, irrigated. Total value of improvements \$400.00.

Q. 5. Of whom does your family consist; and have you and your family resided continuously on said land since first establishing residence thereon? (If unmarried, state the fact.)

A. Myself only. Have been away some working for wages. My total absence will not aggregate more than three months in any one year, since entry. I am unmarried.

Q. 6. For what period or periods have you been absent from the homestead since making final settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

A. Have worked out some, total absence will not aggregate more than three months in any one year.

Q. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

A. The land is not fit for cultivation, and is used for grazing. None of it has been cultivated, most valuable as grazing land. Grazed about 50 head of stock on it each year.

Q. 8. Is your present claim within the limits of an incorporated town or selected site of city or town, or used in any way for trade or business?

A. No.

Q. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

A. Grazing land only, and cannot be used advantageously for any other purpose owing to the rolling condition of it, and rocky.

Q. 10. Are there any indications of coal, Salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

A. No.

Q. 11. Have you ever made any other homestead entry? (If so describe the same)?

A. No.

Q. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom, and for what purpose?

A. No.

Q. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe same, and state where the same is kept.)

A. No.

Q. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

A. D. L. E. 7865, July 2, 1902, S 2 SW 4 Sec. 17, NE 4 NW 4, NW 4 NE 4 Sec. 20, T. 19 N., R. 3

West.

(Signed by witness, and duly sworn to before the Register of the United States Land Office at Great Falls, Montana.)

FINAL AFFIDAVIT OF JAY C. FREEMAN:

I, Jay C. Freeman, having made a Homestead Entry of the SE 4 SW 4 Sec. 8, E 2 NW 4, SW 4 NW 4 Section No. 17, in Township No. 19 N. of Range No. 3 West, subject to entry at Helena, Montana under Section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of Section No. of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a Native born Citizen of the United States; that I have made actual settlement upon and cultivated and resided upon said land since the 2nd day of July 1902 to the present time; that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole Bona Fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

(Signed, Jay C. Freeman, and duly sworn to before the Register of the United States Land Office at Great Falls, Montana.)

RECEIVER'S FINAL RECEIPT, and NON-MINERAL AFFIDAVIT IN THE USUAL FORM ALSO INTRODUCED IN EVIDENCE.)

Thereupon Plaintiff rested.

DEFENDANT'S TESTIMONY:•

Frank D. Cooper, being duly sworn, and interrogated by Mr. Walsh, testified as follows:

“My name is Frank D. Cooper. I am the defendant in this suit. I have lived in Montana since the Fall of 1872. My business is stock business principally. I was in the legislature in territorial days, and I served on the Board of Commissioners two terms, for Cascade County. I know in a general way the land called the Freeman Homestead. I was not on that land until after I had purchased it. I have been around there, of course, I have been in sight of it, around there where I could see it. I purchased the land from Mr. Freeman and paid him a money consideration for it. I purchased it in good faith. At the time I purchased it I had no knowledge that it was claimed that he had not complied with the law with reference to residence and the law with reference to the improvements that must be put on the land. I know Mr. Belgarde, and I heard his testimony with reference to his homestead entry. I had nothing to do with his making that entry, and it was not made under any arrangements with me. I know Thomas Short. I heard his testimony. I did not make any arrangements with him for making his entry, and I did not make any arrangements

with him with reference to a homestead for his daughter; I never saw his daughter that I remember of. I think he made inquiry of me about the land. Lots of people up there did that. I kept maps of that country and people often asked me about different pieces of land. Probably Belgarde did. I can't say positively. He may have asked me if there was any government land over there in that country. I don't remember any conversation that I had with him, but there has been a good many inquiries about government land, and there is at the present time about government land up there. I have sold the land which I purchased from Freeman.

BY MR. SKINNER: I want to see the contract. I assume this land is described, Mr. Walsh, in this contract?

BY MR. WALSH: Yes. There is a long description, and I had to check it over to see that it was correctly described.

BY MR. SKINNER: If your Honor please, all this testimony with reference to the sale of lands is objected to on the ground that the agreement is dated, December 13, 1909; that the records of the clerk of the United States Circuit Court for the District of Montana show that the bill of complaint was filed in the Clerk's office on the 7th day of December, 1909; I think the contract should be introduced in evidence. It may be made a part of the record as an exhibit.

Contract offered and received in evidence is as

follows:

AGREEMENT.

THIS AGREEMENT, made and entered into this 13th day of December, A. D., 1909, by and between Frank D. Cooper, and Alice G. Cooper, his wife, both of Cascade, County of Cascade, Montana, parties of the first part, and Geo Heaton of Perry, Dallas County, Iowa, party of the second part;

WITNESSETH:

That the said parties of the first part have this day sold to the party of the second part, subject to the terms of this agreement, twenty-one thousand eight hundred and forty (21,840) acres of land, more or less according to the Government survey, situate in Cascade and Lewis and Clark Counties, Montana, and more particularly described in Exhibits, A, B, C, D, and E, hereto attached and made a part hereof.

The party of the second part agrees to pay for said lands at the rate of Five and 70/100 Dollars (\$5.70) per acre in the following manner, to-wit:

Twenty Thousand (\$20,000.00) Dollars on or before thirty days after receipt at the office of the second part at 219 Gilfillan Block, St. Paul, Minnesota, of an abstracte compiled by a reliable abstractor, showing a right to such title, to all the property herein sold except two thousand (2000) acres in the parties of the first part, as will enable the first parties to convey the said property accord-

ing to this agreement, and the parties of the first part agree to obtain title to the said two thousand acres excepted and furnish perfect abstract with reasonable diligence;

Twenty-five Hundred Dollars (\$2,500.00) at the signing hereof, receipt whereof is hereby acknowledged. Said amount is to be paid by drawing on the second party through a bank designated by Frank D. Cooper, and this agreement to be mailed by said bank to the second party for his signature upon the return of such draft paid;

Ten Thousand Dollars (\$10,000.00) on July, 1, 1910.

Fifteen Thousand Dollars (\$15,000.00) on October 1, 1910.

It is agreed that the second party may have an extension of the time in which to make the last mentioned payment up to January 1, 1911, if he so desires, and in case of the exercise of this right of extension said payment shall draw interest at the rate of eight per cent per annum during such extension;

The balance shall be paid in five annual installments payable on October 1 of each year after October, 1910.

The deferred payments shall not draw interest till after October 1, 1910, except during such extension of time of payment as hereinbefore mentioned.

From and after October 1, 1910, the deferred payments shall draw interest at the rate of six per cent per annum, subject to the exceptions hereinafter mentioned.

The second party may have an extension of not more than ninety days after the due date of each payment after October 1, 1910, in which to make said payment, and in case of the exercise of this right of extension, or any part thereof, the second party shall pay interest on such payment at the rate of eight per cent per annum during the period of such extension.

The first party is to remain in possession of said premises till August 1, 1910, at which time possession is to be surrendered to the second party or to his agents, provided the second party has fulfilled the portions of the contract to be performed by him prior to said date.

The second party is to have the right to enter upon said premises at any time hereafter for the purpose of surveying and carrying on such engineering work as he may desire.

The second party is to have the right to crop any portion of said premises during the year 1910, which has heretofore been cultivated.

The first party agrees to irrigate the wild and tame hay, if possible, during the year 1910, up to August 1 of said year.

Upon the fulfillment of the terms of this agreement by the second party, the first party agrees to convey to the second party, all lands set out in Exhibit "A" hereto attached, and all lands set out in Exhibit "B" hereto attached to which said first party has obtained or can obtain, deed from the Northern Pacific Railway Company, and all lands

set out in Exhibit "D" hereto attached, subject to the terms of this agreement.

All lands conveyed to the second party under this agreement shall be conveyed in fee simple by Warranty deed free from reservations and incumbrances.

The first parties warrant that the lands set out in Exhibit "B" hereto attached, are under contract between Frank D. Cooper and the Northern Pacific Railway Company bearing date of January 18, 1909. The first parties agree to fulfill the obligations of Frank D. Cooper to the Northern Pacific Railway Company as set out in said contract date January 18, 1909. The first parties agree to use their best efforts to obtain deeds from the Northern Pacific Railway Company to the property set out in Exhibit "B."

It is agreed that the first parties will convey to the second party, by similar warranty deed as hereinbefore mentioned, all property set out in Exhibit "B" to which they obtain deeds, or can obtain deeds, from the Northern Pacific Railway Company under said contract of January 18, 1909. It is agreed that should the first parties be unable to obtain deeds from the Northern Pacific Railway Company to some of the property set out in Exhibit "B", after the fulfillment of the obligations of Frank D. Cooper under said contract of January 18, 1909, then and in that case said first parties are not required to convey to the second party such property set out in Exhibit "B" as they are unable to obtain

deeds to from said Northern Pacific Railway Company, and the second party is not required to pay for such property not conveyed.

It is agreed that the first parties will not permit any of the wild or tame hay to be grazed upon between May 15 and up to August 1, 1910, and that the second party shall have such hay crop with the right to cut and put up the same when desired.

The first parties agree to use their best efforts to speedily obtain clear title to the property set out in Exhibit "D", and to convey the same to the second party under this agreement when title is obtained. If title ~~cannot~~^{can} be obtained, then said first parties are not required to convey the same to the second party.

The first parties agree to deliver possession of said premises to the second party on August 1, 1910, in their present condition of repair, usual wear and tear and action of the elements excepted.

The first parties agree to assign to the second party, or persons designated by him, at the time of the delivery of possession of said premises, all State leases on the property set out in Exhibit "C" hereto attached.

The first parties agree to make all payments accruing on State leases on the property set out in Exhibit "C" prior to the delivery of possession of said premises.

The first parties agree to pay the taxes on the premises for the time they remain in possession of the same.

The first parties agree to pay the second party interest on all money paid prior to the delivery of possession of the premises at the rate of six per cent per annum, said interest to be deducted by the second party from the next payment due to the first parties from the second party after possession is delivered.

The first parties are to furnish the second party an abstract of title to all water rights conveyed under this agreement, which water rights are as per Exhibit "E" hereto attached. Said abstract of said water rights is to be furnished at the same time that the abstract to the other property is furnished, and shall show title to said water rights in the first parties as set out in Exhibit "E" hereto attached, and said first parties agree to convey said water rights when said land is conveyed.

It is agreed that time is the essence of this contract and that upon the failure of the second party to make any of the payments of principal or interest at the time and in the manner as herein set out, then and in that case the first parties at their option, may, upon sixty days' notice to the second party, declare this contract forfeited and they may return into possession of said premises, and that all payments made under this contract shall be forfeited to the parties of the first part, and this contract shall become void and of no effect.

All payments to be made under this contract are to be made to the Great Falls National Bank, Great Falls, Montana, to the credit of Frank D. Cooper,

and payment by check shall constitute a payment provided the said check is honored in the usual course of business.

Interest which is to be paid under this contract is to be paid on each payment at the time that payment is made.

This agreement is made in triplicate and executed in duplicate, one original with Frank D. Cooper and Geo. Heaton, and on copy with John Marshall.

(Signed) FRANK D. COOPER.
ALICE G. COOPER.
GEO. HEATON.

Witness for their Signature:

JOHN MARSHALL,
Twodot, Mont.

Witness for first two signatures:

MELVIN ROWE.

Witness as to Geo. Heaton.

JAMES DENEGRÉ.

(Duly Acknowledged.)

Exhibit A. Mentioned contains a description, with other lands, of the SE 4 SW 4 Sec. 8, E 2 NW 4, SW 4 NW4, Sec. 17, T. 19, N., Range 3 West, being the lands involved in this action.

Exhibit "B" contains a list of the unpatented lands purchased from the Northern Pacific Railway Company.

Exhibit "C" contains a description of the lands leased from the State of Montana.

Exhibit "D" contains a description of other lands.
Exhibit "E" contains a description of water rights.

Witness continues:

Q. Who has got possession of these lands now?

A. Oh, it is Barth, and Ross and King.

BY MR. WALSH: I will ask leave to withdraw the Exhibit and make a copy of it.

BY THE MASTER: Very well, you may submit a copy.

Cooper: That was A. H. Barth, J. R. King and Thomas Ross.

CROSS EXAMINATION BY MR. SKINNER.

As near as I can remember, I moved into that township in 1876. I don't think I took up a home-
stead at that time, think, it was a little later on. I
don't know when I took it up, but it was two or three
years later I should judge. I was born in April
1851. I have lived there continuously since the time
we moved there, excepting that my family lived in
Helena for a while, and we have also lived in Great
Falls for the purpose of sending the children to
school; but my home has been there continuously.
In the year 1899, I don't remember whether I was
there or not. I was there probably from time to
time, but whether or not it was continuously in that
year I couldn't say. During that time I was en-
gaged principally in the sheep business, and also

cattle, and I employed a great many sheep herders and other men to look after my sheep, up to the year 1905. Mr. Freeman worked for me, but I couldn't state just exactly what time. I didn't keep any books of my business, but I kept a time book. I have not that book with me; it was just a memorandum book of the time. I couldn't state positively whether Mr. Freeman was in my employ in 1902. I couldn't say when I first became acquainted with him. I think he had worked for me several times, and I think he worked for me prior to that, but I couldn't state what dates he did work exactly. I did not go to Great Falls with him when he made his final proof, not that I remember. I do not know who prepared the Freeman papers, and I do not know who prepared the final proof. I was not present at the time of the proof. I don't remember it. I don't remember that I went to Great Falls with Mr. Freeman at the time he went there to make the final proof. I have not the deed here that Freeman gave me for this land. I do not remember whether it was the same date that he made final proof that I took the deed or not. It was about that time, somewheres, but I don't know whether it was that date or not. I don't remember of paying Freeman's fees for final proof. If I owned him anything,—if he asked for it at any time, he got it, of course. I don't remember of lending him any money, but I may have lent him some; I lent small amounts lots of times, but I couldn't remember the dates or anything of that kind. I don't remember how much I

paid him for the land. I don't remember whether the true consideration is stated in the deed. I have no recollection of being on the Freeman place between July 1902, and August 18, 1904. I have no recollection of ever being on it, only that I passed in sight of it, along the lower Carnell field. I don't know where the lines are. I never examined any of the lands that I purchased there. I was familiar with all the land around there. I bought land there from the Railroad company two years ago at two dollars an acre, without making any examination of it. As far as a close examination goes, I never examined any of the lands that I purchased there. That is grazing land, land that I bought and just kept for pastures. I can't tell whether I paid Mr. Freeman Two hundred, four hundred, or six hundred dollars for his land. When purchasing land I don't take into very much consideration the improvements on it; I don't allow very much on improvements, and for that class of land the improvements don't cut much of a figure. At the time I bought this land I could not say whether there was a house on it or not, or whether there was a fence, and irrigating ditch. I don't remember about that, at that time. I don't think I have been more than in sight of it but once since. His house is there now; I saw it from off at a distance. The other improvements, I don't remember whether I saw them or not. I don't remember being in Great Falls on the day that Mr. Freeman made his final proof. I know Richard T. Loss and William S. Kirkland.

They worked for me, but I couldn't state the time when it was, exactly. I don't know if they worked for me when Mr. Freeman worked for me or not. In fact, pretty nearly all the boys up in that neighborhood have worked for me at some time or another, but I can't remember the dates and times. I know the Crown Butte Ranch. I had a winter sheep camp there. I don't remember that I employed Mr. Gardipee to fix up the Freeman cabin. If I paid him for it, it was after I purchased it. As near as I can remember, Gardipee has worked for me at different time, and I couldn't tell only in a general way. I don't remember that I knew that the cabin was not completed; I don't know much about it; I don't know whether I got this knowledge before or after I purchased it. I did not know that Freeman filed on the land, only in a general way. I don't remember having any conversation with Freeman about making an entry, excepting in a general way. I do not remember having any conversation in Great Falls with Mr. Short. There was a conversation about land in a general way all the time, but I don't remember any conversation about taking up any. He spoke to me something along that line. I might have asked him what kind of a claim he was looking for,—something of that kind. I don't remember of having his papers made out for him; I don't remember anything about who made out his papers. I don't remember being present at the land office when he or his daughter signed the papers. I don't remember seeing his daughter at

all. I don't remember talking with Short about his daughter taking up land. I don't remember paying for the making of the papers, or the filing fees for Mr. Short or his daughter. I never offered Short or anybody else one hundred dollars for his filing rights by proving upon in fourteen months; or any other consideration in that way. I had no conversation with Mr. Belgarde as he testified. He may have asked me a question about where was the land, the same as a great many others do. If I pointed out the land to him I would have been on the land. That land there is some distance away, some four, or five or six miles. I don't think he knows where the ground is today. I think so in a general way. He was just talking to be talking. I know I didn't pay his filing fee. If he was working for me he might have got the money. If it was paid it was charged up to him. He would have sense enough to know that it was charged up to him. But I don't know how he got the money. If he got any money it was charged up to him. Barth, Ross and King are not the men who bought this land. They have leased it at present from Mr. Heaton. I sold Heaton 21,848 acres of land, which is all the land that that I owned in the immediate vicinity of what I call my home ranch. I bought about 14,000 acres from the Northern Pacific Railway Company.

RE-DIRECT EXAMINATION BY MR. WALSH:

The home ranch is about seven or nine miles from the Freeman land, the way we travel it. When I was away I always had a foreman in charge. To the best of my recollection, I never paid any filing fees for Thomas Short or his daughter.

RE-CROSS EXAMINATION BY MR.
SKINNER:

Why, I know I didn't pay their filing fees. Someone might have borrowed money or something of that kind, but I never paid their filing fees. That is a long while ago to remember these conversations. I don't think I would give anybody money to file on a piece of land,—a saloon keeper.

And the foregoing is all the evidence that was introduced. And thereafter the Court filed its opinion in words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED
STATES, DISTRICT OF MONANA.

UNITED STATES OF AMERICA,

vs.

No. 946.

FRANK D. COOPER and GEO.
HEATON.

Herein the Court finds that Freeman, entryman of the land involved, did not built any house upon said land, did not reside thereon, did not fence the same, nor any or either of them prior to his final proof; that his improvements did not exceed \$100; that defendant Cooper knew the foregoing facts

when he purchased said land from Freeman; that said defendant did not pay a valuable consideration therefor. And therefrom the Court concludes that the aforesaid final proof was false and fraudulent, was believed and relied upon by complainant and induced issuance of the patent involved; that defendant Cooper is not a bona fide purchaser of said land; that cancellation of said patent has become impracticable since suit brought; that complainant is entitled to the relief of damages against defendant Cooper in the value of the land, \$5.70 per acre, with legal interest from December 13, 1909, and all costs; that unless paid by defendant Cooper, defendant Heaton shall pay the amount thereof to complainant from the unpaid purchase money owing by defendant Heaton to defendant Cooper upon his contract of purchase of said lands when made a part hereto and appearing herein, such payment to discharge said purchase price to the extent thereof; that complainant have a lien therefore upon the land involved for security, and foreclosure thereof. And decree accordingly will be entered.

January 20, 1914.

BOURQUIN, J.

Now comes the defendant, Frank D. Cooper, and presents the foregoing as his Statement on Appeal, and moves that the same be approved by the Court.

JAMES A. WALSH,

Solicitor for the Defendant,
Frank D. Cooper.

I, the undersigned, Judge of the above named Court, do hereby certify that the foregoing Statement of Record on Appeal is true, complete, and properly prepared, and the same is therefore hereby approved by the Court.

Dated this 15th day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,
Judge.

(Endorsed: Filed July 15, 1914. Geo. W. Sproule, Clerk.)

And thereafter, the defendant, Frank D. Cooper, served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

NOTICE OF LODGEMENT OF TRANSCRIPT
ON APPEAL.

No. 946.

To the above named complainant, and Mr. B. K. Wheeler, United States Attorney for the District of Montana, its solicitor, and Mr. S. C. Ford, Assistant United States Attorney, and to the defendant, George Heaton, and Messrs. Day and Mapes, his Solicitors:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE:

That the statement of record on Appeal of the Defendant, Frank D. Cooper, in the above entitled action has been lodged, and is now in the office of the clerk of the above named Court.

AND YOU WILL FURTHER TAKE NOTICE: That at the United States Court Room in the City of Helena, Montana, on the Twenty-second day of June, Nineteen Hundred and Fourteen, at the opening of Court, on that day, or as soon thereafter as counsel can be heard, the undersigned will ask the Court to approve the said Statement on Appeal, so prepared and lodged with the Clerk as aforesaid.

Dated this 11th day of June, A. D., Nineteen Hundred and Fourteen.

JAMES A. WALSH,
Solicitor for the Defendant,
Frank D. Cooper.

Service of the foregoing notice accepted and copy thereof received this eleventh day of June, 1914.

B. K. WHEELER,
United States Attorney for the District of
Montana and Solicitor for the complain-
ant.

DAY & MAPES,
Solicitors for Defendant George Heaton.

And thereafter the defendant, Frank D. Cooper served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

NOTICE OF SUMMONS AND SEVERANCE.
TO THE ABOVE NAMED DEFENDANT,
GEORGE HEATON, and MESSRS. DAY
AND MAPES, his Solicitors:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE:

That the defendant, FRANK D. COOPER, in the above entitled action, intends to appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment and decree made, given and entered by the above named court in the above entitled cause, and filed on the 28th day of January, Nineteen Hundred and Fourteen, and the said defendant, Frank D. Cooper, hereby requests that you join with him in the said appeal, and upon your failure to so join with him in said appeal, then he will prosecute the said appeal alone.

JAMES A. WALSH,
Solicitor for defendant,
Frank D. Cooper.

Service of the foregoing notice admitted and copy thereof received this twenty-fifth day of June, Nineteen Hundred and Fourteen, and the said George Heaton hereby refuses to join in said appeal.

DAY & MAPES,
Solicitors for the Defendant,
George Heaton.

Copy of the foregoing received, June 26th, 1914.

B. K. WHEELER,
U. S. Attorney.

Endorsed: Filed June 26, 1914. Geo. W. Sproule,
Clerk.

And thereafter the Defendant, Frank D. Cooper, served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

NOTICE.

To the above named defendant, George Heaton, and
Messrs. Day and Mapes, his Solicitors:

YOU, AND EACH OF YOU WILL PLEASE
TAKE NOTICE:

That at the court room in the City of Helena,
Montana, on the Second day of July, Nineteen Hun-
dred and Fourteen, at the opening of Court on that
day, or as soon thereafter as counsel can be heard,
the undersigned will call up the motion hereto an-
nexed and herewith served upon you.

JAMES A WALSH,
Solicitor for the defendant,
Frank D. Cooper.

Service of the foregoing notice admitted and copy
thereof received, and copy of motion received this
26th day of June, A. D., Nineteen Hundred and
Fourteen.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

B. K. WHEELER,
United States Attorney for the
District of Montana.

Endorsed: Filed June 26th, 1914. Geo. W.
Sproule, Clerk.

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

MOTION.

Now comes the defendant, Frank D. Cooper, and moves the court for an order permitting him to prosecute alone an appeal from the judgment and decree made, given and entered in the above entitled action, and filed on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen, for the reason that his co-defendant, George Heaton, refuses to join in the appeal.

JAMES A. WALSH,
Solicitor for the Defendant,
Frank D. Cooper.

Endorsed: Filed June 26, 1914. Geo. W. Sproule,
Clerk.

And thereafter the Court made and entered the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

ORDER OF SEVERANCE.

A judgment having been on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen, duly made, given and entered in the above entitled cause against the above named defendants, and the defendant, Frank D. Cooper, having on the 25th day of June, A. D., Nineteen Hundred and Fourteen, served on his co-defendant, George Heaton, a summons, and a notice of his intention

to appeal from the said judgment, and requesting the said George Heaton to join with him in said appeal, and notifying him that upon his failure to so join, that he, the said defendant Frank D. Cooper, would prosecute the said appeal alone; and the said defendant, George Heaton, having in writing declined to join in the said appeal, and the said defendant, Frank D. Cooper, having on the 26th day of June, A. D., Nineteen Hundred and Fourteen served upon his co-defendant, George Heaton, notice of motion of severance and that he, the said Frank D. Cooper be allowed to prosecute the said appeal alone, and which said notice and motion was likewise, on said date, served upon the complainant; and the said motion coming on for hearing the Second day of July, A. D., Nineteen Hundred and Fourteen, and the court having duly considered the same;

IT IS THEREFORE ORDERED: That the interest of said defendant, Frank D. Cooper, be, and the same is hereby severed from the defendant, George Heaton, and the said defendant, Frank D. Cooper be allowed to prosecute the said appeal alone.

IT IS FURTHER ORDERED: That this order and the motion and notices above mentioned be made a part of the record on appeal.

Dated this Second day of July, A. D., Nineteen Hundred and Fourteen.

GEORGE M. BOURQUIN,
JUDGE of the above named Court.

Due service of the foregoing is hereby admitted this Second day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

Endorsed: Filed July 2, 1914. Geo. W. Sproule,
Clerk.

And thereafter the defendant Frank D. Cooper served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

PETITION FOR APPEAL:

To the Honorable, the Judge of the above named
Court:

The above named defendant, Frank D. Cooper, conceiving himself to be aggrieved by the decree entered herein on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen, in the above entitled proceeding, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that an appeal be allowed and that a citation issue as provided by law, and that a transcript of the record and proceedings and papers upon which said decree was based, duly authenticated,

may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner further prays that the proper order fixing the security to be required of him to perfect his said appeal be made.

JAMES A. WALSH,
Solicitor for Defendant,
Frank D. Cooper.

Due service of the foregoing is hereby admitted this Second day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the Defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And at the same time the defendant Frank D. Cooper served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

ASSIGNMENT OF ERRORS.

The defendant, Frank D. Cooper, in the above entitled action, in connection with his appeal, hereby makes the following assignment of errors, which he avers occurred in this cause, to-wit:

I.

It was error for the court to hold and find that Jay C. Freeman, entryman of the land involved, did not build any house upon said land, and did not reside thereon, and did not fence the same, nor any or either of them prior to his final proof.

II.

It was error for the Court to hold and find that his, Freeman's, improvements did not exceed One Hundred Dollars in value, and that the defendant Cooper knew the said facts, or any of said facts when he purchased the said land from Freeman, or at any other time.

III.

It was error for the court to hold and find that the defendant Cooper knew of the facts or any of the facts set forth in specific paragraphs Numbered One and Two, when he purchased the said land from Freeman, or at any other time.

IV.

It was error for the court to hold and find that the defendant, Frank D. Cooper did not pay a valuable consideration for the land embraced in the Freeman entry.

V.

It was error for the court to conclude, hold and find that the final proof of the entryman, Freeman, was false and fraudulent, or that the complainant was induced to issue the patent herein involved by relying upon any false or fraudulent statements.

VI.

It was error for the court to conclude, hold and find that the defendant Frank D. Cooper is not or was not a bona fide purchaser of said land.

VII.

It was error for the court to conclude, hold and find that the complainant is entitled to the relief of damages against the defendant Frank D. Cooper in the alleged value of the land, Five and $\frac{70}{100}$ (\$5.70) Dollars per acre, as stated by the court, with legal interest from December 13th, Nineteen Hundred and Nine, amounting in all to Twelve Hundred and Twelve and $\frac{96}{100}$ (\$1212.96) Dollars, and all costs.

VIII.

It was error for the court to conclude, hold and find that the value of the land was or is Five and $\frac{70}{100}$ (\$5.70) Dollars per acre, no evidence having been introduced as to value.

IX.

It was error for the court to conclude, hold and find that unless the said sum of Twelve Hundred and Twelve and $\frac{96}{100}$ (\$1212.96) Dollars was paid by the defendant Frank D. Cooper, that the defendant George Heaton shall pay the amount thereof to complainant from the unpaid purchase money owing by the defendant Heaton to the defendant Frank D. Cooper upon his contract of purchase of said lands when made a party hereto and appearing herein.

IX.

It was error for the court to conclude, hold and find that such payment, when made by the said Heaton, should be a discharge of said purchase price to the extent thereof.

X.

It was error for the court to conclude, hold and find that the complainant has a lien for the said sum of Twelve Hundred and Twelve and $96/100$ (\$1212.96) Dollars upon the land involved, and was entitled to the foreclosure thereof.

XI.

It was error for the court to conclude, hold and find that the complainant was entitled to a decree according to the findings and conclusions of the Court.

XII.

It was error for the court to order, adjudge and decree that the complainant have and recover from the defendant Frank D. Cooper the sum of Nine Hundred and Twelve (\$912.00) Dollars, with interest from the 13th day of December, A. D., Nineteen Hundred and Nine, (1909), amounting in all to the sum of Twelve Hundred and Twelve and $96/100$ (\$1212.96) Dollars, together with the costs and taxes, for that, no issue was raised in the pleadings, and no evidence was introduced concerning the value of the land.

XIII.

It was error for the court to order, adjudge and decree that unless the said amount, Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars, and costs, be paid by the defendant, Frank D. Cooper, that the defendant, George Heaton, pay the same to the complainant from the unpaid purchase money claimed to be owing by the said George Heaton to the defendant Frank D. Cooper upon his contract for the purchase of the lands.

XIV.

It was error for the court to order, adjudge and decree that upon such payment being made by the said defendant George Heaton it shall discharge the purchase price to the extent thereof.

XV.

It was error for the court to order, adjudge and decree that the complainant have a lien upon the lands and premises mentioned in the complaint, for the sum of Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars, and the costs, and that it is entitled to the foreclosure thereof.

WHEREFORE: The said defendant, Frank D. Cooper, prays that the said judgment of the said District Court of the United States, for the District of Montana, rendered in the said suit be reversed.

JAMES A. WALSH,
Solicitor of the Defendant,
Frank D. Cooper.

Due service of the foregoing assignment of errors is hereby admitted this 15th day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the Defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And thereupon the court made and entered the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

ORDER ALLOWING APPEAL.

On this day came the defendant, Frank D. Cooper and presented his petition for appeal, and his assignments of error accompanying the same, which petition, upon consideration thereof, was allowed, and the court allowed the appeal to the United States Circuit Court of Appeals for the Ninth Circuit, upon filing a bond in the sum of Fifteen Hundred Dollars, with good and sufficient security to be approved by the Court.

And it further appearing that the defendant, George Heaton was notified in writing to join in the said appeal, or to decline to join in such appeal; and it further appearing that the said George

Heaton has declined to join in the appeal, and has severed himself from the defense of this cause, the said defendant Frank D. Cooper is hereby granted his appeal as aforesaid, and his interest is severed in said appeal from the other defendant, George Heaton, herein.

Dated this 15th day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,
JUDGE of the above named Court.

Due service of the foregoing is hereby admitted this 15 day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And thereupon, the defendant, Frank D. Cooper, executed and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That I, FRANK D. COOPER, as principal, and
J. L. TRUSCOTT and E. D. COLEMAN of Glas-
gow, Montana, as sureties, are held and firmly bound

unto the United States of America, in the sum of Fifteen Hundred (\$1500.00) Dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we do hereby bind ourselves, jointly and severally, and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Scaled with our seals, and dated this 6 day of July, A. D., Nineteen Hundred and Fourteen.

WHEREAS, the above named defendant, FRANK D. COOPER, has prosecuted an appeal to the United Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in the above entitled cause in the United States District Court for the District of Montana, made and entered on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen.

NOW, THEREFORE, the condition of this obligation is such that if the above named defendant Frank D. Cooper, shall prosecute the said appeal to effect and shall answer all damages and costs that may be awarded against him if he fails to make good his appeal then the above obligation is to be void; otherwise to remain in full force and virtue.

It is expressly agreed by the said J. L. Truscott and E. D. Coleman, the sureties above named, that in case of a breach of any condition of this bond, the court may, upon notice of not less than ten days, to the said J. L. Truscott and E. D. Coleman, proceed summarily in this action to ascertain the amount which such sureties are bound to pay on ac-

count of such breach, and render judgment against them for said amount and award execution therefor.

IN TESTIMONY WHEREOF: We have hereunto set our hands and seals this 6th day of July, 1914.

FRANK D. COOPER. (SEAL)

J. L. TRUSCOTT. (SEAL)

E. D. COLEMAN. (SEAL)

STATE OF MONTANA,
COUNTY OF VALLEY,—ss.

J. L. TRUSCOTT and E. D. COLEMAN, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself, and not for the other says: That he is a resident and freeholder or householder in the said County of Valley, State of Montana, and that he is worth the sum in the said undertaking, specified over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

J. L. TRUSCOTT. (SEAL)

E. D. COLEMAN. (SEAL)

Subscribed and sworn to before me this 6th day of July, A. D., Nineteen Hundred and Fourteen.

C. D. ARNOLT,

Notary Public in and for the State of Montana; residing at Glasgow, Montana.

(SEAL.)

My Commission expires Jan. 26, 1915.

The foregoing bond is hereby approved this 15th

day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,
JUDGE of the above Named Court.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And thereupon the court approved said bond, and issued the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

CITATION.

UNITED STATES OF AMERICA:

TO THE UNITED STATES OF AMERICA, Complainant and Appellee, and to B. K. WHEELER, United States Attorney, Solicitor for Appellee, and to GEORGE HEATON, defendant, and MESSRS. DAY & MAPES, his Solicitors, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Montana, wherein Frank D. Cooper is the appellant, and the United States of America and George Heaton are the Appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be

corrected and reversed, and speedy justice should not be done to the parties on their behalf.

WITNESS, the Honorable George M. Bourquin, Judge of the United States District Court, for the District of Montana, this Fifteenth day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,
Judge of the District Court for the
District of Montana.

Due and personal service of the above citation is hereby admitted, and copy received and acknowledged this Fifteenth day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney.
DAY & MAPES,
E. C. DAY & T. D. MAPES,
Solicitors for the Defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And thereafter the defendant Frank D. Cooper served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 946.

PRAECIPE.

TO THE HONORABLE B. K. WHEELER, UNITED STATES DISTRICT ATTORNEY FOR THE DISTRICT OF MONTANA, Solicitor for the complainant, and to MESSRS. DAY & MAPES, Solicitors for the Defendant, George Heaton:

THE UNDERSIGNED, Solicitor for the defendant and appellant, herein, Frank D. Cooper, hereby files and serves upon you his praecipe, in conformity with the rules of Court, hereby indicating the portions of the record to be incorporated into the transcript on appeal herein, and which said portions of said record you are hereby notified the said defendant and appellant will incorporate and include in the record on appeal. Said portions are as follows, to-wit:

A.

Judgment Roll, consisting of:

1. Bill of Complaint.
2. The Clerk's note following the Bill of Complaint.
3. The Subpoena.
4. The answer of the defendant, Frank D. Cooper, to the Bill of Complaint.
5. The Replication.
6. Order allowing Amendments to the Bill of Complaint.

7. The Notice, and Amendments to the Bill of Complaint.

8. The order to serve on the defendant George Heaton by publication.

9. Return of the Mashall.

10. Separate Answer^A of the defendant, George Heaton.

11. Replication to the Answer of the defendant, George Heaton.

12. The Decree.

13. The Certificate of the Clerk.

B.

The evidence introduced as incorporated in the statement of record on appeal.

C.

A memorandum of the documents introduced in evidence.

D.

A memorandum of the opinion of the Court.

E.

Defendant's notice to settle Bill of Exceptions.

F.

Certificate of Judge.

G.

Notice of Defendant Cooper's intention to appeal, and request to the defendant George Heaton to join in the appeal.

H.

Acceptance of service of the notice, and refusal to join in the appeal.

I.

Motion of Severance.

J.

Notice of Motion of Severance.

K.

Order of Severance.

L.

Petition for Appeal.

M.

Assignment of Errors.

N.

Order Allowing Appeal.

O.

Citation.

P.

Bond on Appeal.

Q.

This Praecipe.

R.

Insert the title of the cause in full in the Bill of Complaint.

S.

Omit the title of the court and cause in all subsequent papers and pleadings, excepting the statement, "Title of Court, Title of Cause."

T.

Omit the endorsements, excepting to state, "Filed," giving the date and the name of the clerk.

U.

Insert the acknowledgments of service of papers complete.

JAMES A. WALSH,
Solicitor for the defendant,
Frank D. Cooper.

TO GEORGE W. SPROULE, Clerk of the above
named Court:

You will please prepare the record on Appeal in the foregoing entitled cause, and incorporate therein the papers and records set forth in the foregoing Praecipe.

JAMES A. WALSH,
Solicitor for the Defendant,
Frank D. Cooper.

Due service of the foregoing admitted this 15th day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

(TITLE OF COURT, TITLE OF CAUSE.)

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF MONTANA.—ss.

I, George W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals, for the Ninth Circuit, that the foregoing volume, consisting of ¹⁰⁷~~110~~
~~113~~
~~116~~ pages, numbered consecutively from One to inclusive, is a true and correct transcript of the pleadings, processes, final decrees, orders, testimony and all other proceedings had in said cause, and of the whole thereof as appears from the original files and records of said court in my custody as such clerk; and I further certify and return that I have annexed to said transcript, and included within said pages, the original citation issued in said cause; all the foregoing being included in the statement or final record herein as approved by the Judge of this court.

In Testimony Whereof: I have hereunto set my hand and affixed the seal of this Court, at Helena, Montana, this Eight day of August, A. D. Nineteen Hundred and Fourteen.

Geo W Sproule
Clerk.

Seal

